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Abbreviations and acronyms:

BC - before Christ

CE - the Council of Europe

CJEU - the Court of Justice of the European Union

ECHR - European Convention on Human Rights

EU – the European Union

EUSR - the EU Special Representative for Human Rights

ICCPR - International Covenant on Civil and Political Rights

OSCE - the Organization for Security and Co-operation in Europe

TEU - the Treaty on European Union

TV- Television

UDHR - the Universal Declaration on Human Rights

UN - the United Nation

US – the United States

1. INTRODUCTION

Human is the only creature on planet Earth who has the capacity of speech. This is a very big opportunity and power. Words can convey feelings, attitudes, and intentions. With the help of words it is possible to do great things. The power of speech can influence the community outlook, establish peace and understanding. But unfortunately, if this happens, it can also have negative power. An evil or ill-advised word may even provoke a war. All of this is not news, of course, and humanity from the immemorial time perfectly understood the power and meaning of speech. Confirmation can be the ancient libraries and Collections of laws. The power and importance of the word was known for ever since.

1.1. Freedom of speech and expression in the ancient era of Greece and Rome

The term Democracy, part of which is freedom of speech, is not a new term. The cradle of democracy is ancient Greece. It means peoples power, peoples government. Using this system people could effectively control their rights and freedom of speech among them. They took direct participation in political life.

The Athenian constitution clearly reveals the mechanism of democracy, usually related to Athens, and includes texts such as the works of the Greek historians Herodotus, Thucydides, and Xenophon; and other texts by representatives of the Aristotle school. They are preserved in the form of inscriptions on stone, decrees, laws, contracts and much more. According to the historian K.A. Raaflaub, democracy in ancient Athens was a unique and truly revolutionary system that implemented its basic principle to an unprecedented level: “everyone was given equal political rights, regardless of their origin, wealth, social status, education, personal qualities and any other factors that usually determine status in society.”¹

The greatest legacy of ancient Greece is democracy, which has become the cornerstone of all democracies in the modern world.

¹ http://www.untag-smd.ac.id/files/Perpustakaan_Digital_1/DEMOCRACY%20Origins%20of%20democracy%20in%20ancient%20Greece.pdf, p.2

Freedom of speech is often discussed. Although most people agree that freedom of speech is a right, many people disagree about how far this right goes, and the ancient Greeks often had the same debates. The ancient Greeks were the founders of freedom of speech. In their culture, they studied human experience, freedom of speech, which was clearly not inclined to glorify power and authorities. However, as in modern societies, ancient Greece did not allow complete freedom of speech. Leaders, philosophers, artists, and ordinary citizens made efforts for a balance between personal freedom and public order.²

The Romans considered freedom of speech to be part of the freedom granted by the republican regime, and it is argued that this is not considered as a human right, but as a political right. In the republic this right was intensively used both in institutional and non-institutional conditions. Among the first were meetings, the Senate, the courts and, surprisingly, the army. The appearance of the Empire greatly influenced the freedom of speech. Although it did not completely disappear, it ceased to be considered a right (it was only tolerated) and became problematic for the new political regime. With regard to its legal status, freedom of speech was never recognized by law as a right. On the contrary, legal restrictions developed from a soft beginning in accordance with the earliest written legislation of ancient Roman law, traditionally dated 451–450 BC.³

In this context, the main thesis is that beyond a vague (but sufficient) theoretical framework, in the days of the Republic, Rome had a refined practice of freedom of speech.⁴

1.2. Freedom of speech and expression in medieval Europe (including Georgia)

The author of Georgian medieval epic poem, *The Knight in the Panther's Skin*, Shota Rustaveli recognized the equality of people, regardless of racial, sexual or religion belongings and values that are very actual nowadays. Shota Rustaveli had his

² https://www.ancient.eu/Athenian_Democracy/

³ freedom of speech in Rome, José Manuel Díaz de Valdés

⁴ This vagueness is not exceptional in Rome. In fact, Earl highlights the “essential vagueness common to all Roman political thought”. See: Earl, Donald, *The Moral And Political Tradition of Rome* (London, 1967), p. 63.

attitudes on the speech. He wrote, that the person must not abuse the speech and express his/her opinions shortly and clear.

Summarizing the studies of several European countries in the period 1300-1700, the series will open up different points of view on the pre-modern freedom of speech. Although freedom of speech, “the right to express one’s beliefs and ideas without unreasonable government restrictions,” was by no means a fundamental right in the Late Middle Ages and the beginning of the modern period, expressing critical opinions about power has always been possible and often widespread. They can be spoken orally, through oral or written word, as well as through other sign systems and media, ranging from the sound of musical instruments to heraldic languages.”⁵

In 1633, Galileo Galilee was brought before appeared before the Inquisition for insisting that the sun does not revolve around the earth. He was punished for a crime that would be protected by freedom of speech a centuries later .⁶

Europe’s earliest newspapers date from the 17th century when printed periodicals quickly began to crowd out handwritten newspapers. This was of great importance for the rapid and extensive dissemination of information. This is evidenced by the famous quote by Napoleon Bonaparte: “Four hostile newspapers are more to be feared than a thousand bayonets.”⁷

the monarchy was suppressed, and the French Republic was created thanks to the French Revolution. This is one of the most important documents in the history of human rights. This is one of the most important documents in the history of human rights - the Declaration of Human Rights and Citizens of the French Republic. He was adopted by the National Constitutional Assembly of France on August 26, 1789. This text is still an integral part of the Constitution of the French Republic (included in the introduction to the current Constitution). The declaration recognizes human freedom and equality from birth, the rule of law, the principle of the presumption of innocence, freedom of expression and speech.⁸

⁵ Freedom of speech in medieval and early modern society. Media, power, politics, and gender (1300-1700)

⁶ <https://www.dosomething.org/us/facts/11-facts-about-free-speech>

⁷ https://www.brainyquote.com/lists/authors/top_10_napoleon_bonaparte_quotes

⁸ <https://www.civiceducation.ge/ka/lessons/1-12>

1.3. Views and attitudes on freedom of expression in the early years of the 20th century's Georgia

Freedom of speech today is a part of the domestic and international law of specific states, and conversely, it is important to briefly review both the main international and domestic human rights documents.

In Georgia, views on freedom of speech were well developed. The great thinker of the 19th century, Vazha-Pshavela, wrote:" Freedom is not if you say, do, or write whatever you want -No! Each word and action must be animated by common public happiness"⁹

The history of independent Georgia considers the constitution of the 1921 Democratic Republic of Georgia as the first legal document on human rights, which contain a list of human rights. However, in the second half of the XIX and early XX centuries, Ilya Chavchavadze, Vazha-Pshavela, Sergi Meskhi, Jacob Gogebashvili, Mikhail Javakhishvili, and others actively wrote about human rights and freedoms. The letters written by them about freedom, independent court, human equality, and sexual equality are still important.

The Constitution of Georgia of 1921 belongs to the constitutions of the first generation and was one of the most progressive constitutions of that time. The third chapter of the Constitution is devoted to human rights.¹⁰

By with this constitution, the death penalty was abolished, which even in many Western European countries was unimaginable.

The 1921 Constitution recognizes such rights and constitutional principles as:

- Equality of citizens;
- Gender equality;
- The inviolability of a person or the impossibility of detaining a person, without a decision of a court or other authorized body;
- Freedom of faith and expression;

⁹ <http://www.mediacity.ge/news.php?id=780>

¹⁰ Georgia's internal acts on human rights

- Freedom of religion;
- The right of assembly and manifestation;

The Constitution of 1921 could not enter into force due to the occupation of Georgia by Russia. The Red Army took Tbilisi on February 25, 4 days after its adoption. The 1921 Constitution was printed by Nestor Hvingya in his own printing house in Batumi, which was an act of civil heroism.

1.4. Research questions

Under this research I intend to examine the following questions:

- Whether the existing laws and policies pertaining to freedom of speech are compatible with international standards?
- Whether these laws and policies are conducive for a democratic society in Georgia?
- Whether these laws and policies are properly implemented in Georgia?

1.5. Research Methodology

To achieve research goals, I have chosen the method of theoretical analysis. Therefore, theoretical studies will be used in this thesis on the Freedom of Speech. I also relied on available literature and documentation such as textbooks, scientific articles, International and Regional Conventions, International and National Courts decisions, all possible online and offline information on this theme.

1.6. Scope and Limitation

This research is based on the cases from Georgian and European Court of Human Rights Law. It also covers the provisions of International and Regional Conventions on Freedom of Expression.

The article 10 of the European Convention on Human Rights (ECHR) reads:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”¹¹

The convention does not support only one but several “freedoms of speech”, the leading cause of complexity is the concept of “duties and responsibilities”, as set out in article 10 (2). This provision of the Convention is unique. It is absent in articles containing restrictive requirements. However, the main reason for this complexity is the notion of “duties and responsibilities” set forth in Article 10(2). The convention does not support one but several “freedom of speech”,

The international law protects right to freedom of expression in accordance with Article 19 of the Universal Declaration of Human Rights (UDHR), which is a leading human right instrument that was developed under the protection of the United Nations and was adopted in 1948. It is formulated as follows:

"Everyone has the right to freedom of opinion and expression; this right includes the right to adhere to one's opinion without any interference, as well as to seek, receive and disseminate information and ideas through any mass media and regardless of state borders."¹²

This provision has now passed into what is known as customary international law, the body of law that is considered binding on all States as a matter of international custom. Freedom of expression finds further protection in a number of international treaties –

¹¹ https://www.echr.coe.int/Documents/Convention_ENG.pdf

¹² http://www.claiminghumanrights.org/udhr_article_19.html

legal instruments that States have signed up to and are legally bound to protect. The International Covenant on Civil and Political Rights (ICCPR) is the most important for Georgia. The European Convention on Human Rights (ECHR) is a treaty ratified by all member states of the Council of Europe. Both treaties contain provisions guaranteeing the right to freedom of expression, consistent with the UDHR. Article 19 of the ICCPR provides:

“1. Everyone shall have the right to freedom of opinion.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.”¹³

The right to freedom of expression is guaranteed to everyone. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

This provision is currently international law, which considers binding on all member states. Freedom of expression is further protected by international treaties - legal documents that must be protected by signatory states. For Georgia, the most important of these are the International Covenant on Civil and Political Rights (ICCPR), judgments an international court, the European Court of Human Rights.

The case-law of the European Court recognizes the principles of the Council of Europe Convention on Human Rights. Regarding the observance of human rights by the member states in the preamble of the unified act of 1986 was confirmed and subsequently reflected in the preamble to Article 6 of the Convention of the EU Treaty. This article is based on the afore mentioned Convention and on the common traditions of the Member States. This was later confirmed by the Amsterdam Treaty, which extended the jurisdiction of the court in accordance with article 6. The new provision defines the measures to be used in cases when a Member State violates the fundamental principles of the Union.¹⁴

¹³ http://www.claiminghumanrights.org/udhr_article_19.html

Based on its global significance, the right to freedom of expression is also recognized and protected in two other regional human rights instruments. This is article 13 of the American Convention on Human Rights and article 9 of the African Charter on Human and Peoples' Rights. Decisions made by the courts under these regional mechanisms authoritatively interpret the principles of freedom of expression in various contexts.

2. The importance of freedom of expression

Freedom of expression is the most important human right. It guarantees the essential foundation for democracy. There can be no democracy if people cannot freely express what they want. They must receive sufficient information to vote consciously. This is the basis for securing other rights that have been recognized by international courts and bodies around the world. In 1946, at its first session, the UN General Assembly adopted resolution 59 (I), which states that: "Freedom of information is one of the fundamental human rights and the cornerstone of all freedoms to which the United Nations Peoples are sanctified".¹⁵

These contributions were supported by many courts and bodies. The UN Human Rights Committee stated that: "The right to freedom of expression is paramount in any democratic society.

The importance of freedom of expression is the main persistence for the European Court of Human Rights. He reaffirmed that freedom of expression is a fundamental value of a democratic society, a mechanism for its progress and creates conditions for the development of each person. These provisions are vital not only to "information" or "Ideas" that are positively perceived to be indifferent, but also to those that insult, shock, or disturb the state or any part of the population. Without pluralism, tolerance and breadth of views, there is no democratic society. Demand for freedom of speech with special demand for media.

The European Court of Human Rights has admitted: "the outstanding role of the press in a state governed by the rule of law." He also stated:

¹⁵ <https://www.change.org/p/the-government-of-the-bahamas-freedom-of-information-act/u/4463405>

"Freedom of the press provides the public with one of the best ways to find out and form an opinion on the ideas and opinions of their political leaders. In particular, it allows politicians to reflect and comment on concerns about public opinion; thus, it makes possible to participate in the free political debate that underlies the concept of a democratic society."

As the UN Human Rights Committee noticed, free media play a leading role in the political process:

"The open transfer of information and ideas on public and political issues between citizens, candidates and elected representatives is crucial. This means that the free press and other media can comment on public issues without censorship or restriction and inform public opinion."

As Lord Acton said: "Power corrupts. Absolute power corrupts absolutely. " Or "unlimited power can spoil the mind of those who possess it." Freedom of speech is a tool that allows you to deprive someone of absolute power.

3. International legislative basis of freedom of speech

Modern universal and sophisticated legislation on freedom of expression includes a long period of human development. This is the achievement of progressive figures of their time: philosophers, scientists, public figures, whom we are in debt and are very grateful. All battles contained elements of self-expression, sometimes this was the cause of the struggle. It should be noted, that safety of human rights is a prerequisite of general well-being. It is impossible to imagine a democratic society without the recognition of human rights values. The interest of individuals is inseparable from the benefits of community.

3.1.UN General Assembly: The Universal Declaration of Human Rights

The Universal Declaration of Human Rights, which was adopted by the UN General Assembly on December 10, 1948, was like an echo of the Second World War. World leaders approve the UN Charter guaranteeing the rights of everyone around the world.

The document, on the Universal Declaration of Human Rights, was considered at the first session of the General Assembly in 1946. At its first session in early 1947, the commission authorized its members to formulate a “preliminary draft of the International Bill of Human Rights”.¹⁶ The commission met for the first time in 1947. The entire text of the UDHR was constituted in less than two years. At a time when the world was divided into eastern and western blocks, the search for a common point of view on the document was a considerable task.¹⁷

Universal Declaration of “Human Rights”, was adopted by the UN General Assembly on December 21, 1948, resolution 217 A (111). This is not a legally binding treaty, but lawyers at the international level argued about how “international documents are binding” from some of these texts, that impose legal obligations on the signatory state, as well as on “agreement” or “convention”. The United Nations Charter is also binding.¹⁸ The Council of Europe was formed in 1949 to promote social and economic progress and protect democracy, human rights and the supremacy of the law. The charter of the United Nations is also obligatory to comply with the legal point of view. The right to freedom of expression is reflected in Article 19 of the UDHR:

“Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and, impart information and ideas through any media and regardless of frontiers.”¹⁹

3.2. The European Convention on Human Rights

The central component of the human rights system is the European Convention on Human Rights. This Convention is one of the most revolutionary international agreements ever signed. States recognized by the European Convention on Human Rights agreed to enjoy the rights defined in the Convention and to take “effective” legal measures for human rights violations in their respective territories.²⁰ The European Convention on Human Rights (ECHR) in fact is an international convention for the

¹⁶ <https://www.ohchr.org/documents/publications/factsheet2rev.1en.pdf>

¹⁷ History of the Document, Universal Declaration of Human Rights

¹⁸ Human rights and the police - some questions and answers to these questions, National Parliamentary Library of Georgia

¹⁹ http://www.claiminghumanrights.org/udhr_article_19.html

²⁰ <http://www.internationaldemocracywatch.org/index.php/council-of-europe->

protection of human rights and political freedoms in Europe. The convention, developed in 1950 by the newly formed Council of Europe, entered into force on September 3, 1953. All Council of Europe member states are in common with the ideas of the Convention and are joined to it. The Convention established the European Court of Human Rights (ECHR). A person who believes that a State party has violated his or her rights under the Convention may apply to a court. Decisions establishing violations are binding on the respective states, and they are obliged to execute them. Council of Europe Committee of Ministers monitors the execution of court decisions. The convention has several protocols that change the scope of the convention.²¹

Freedom of expression is fairly granted the most important role in free and democratic society. It should be noted that the marginalization of the concepts of human rights (as individual interests) and public interests is completely temporary. It is a prerequisite and basis for supporting the idea, when the individual and public interests are not presented as contradictory, abstract concepts. Separately from each other, the private and the general are classical values. The legal content of these concepts is interrelated; they encompass and condition each other. Safeguard any individual interests contributes to protecting the public interest and vice versa. Also, the protection of human rights is a prerequisite for universal welfare. The existence of a democratic society is unthinkable without the protection of human rights.

4. Philosophy and Theory of Freedom of Expression

Freedom of expression is fairly considered one of the most fundamental cornerstones of a democratic society, ensuring vitality of public democratic processes. This is due to the fact that freedom of expression has a dual nature and strength. It is absolutely universal in nature. It serves as a purpose and means at the same time. It is not only kindness or value in itself, but also the best way to protect other values at the same time. Freedom of expression is a basic right in modern societies, and it has particular significance in relation to the well-functioning of the constitutional-democratic process.

²¹

https://www.msz.gov.pl/en/foreign_policy/international_organisations/council_of_europe/council_of_europe_institutions/

Freedom of expression is a basic right in modern societies, and it has particular importance in relation to the well-functioning of the constitutional-democratic process.²²

Need of expression is inner demand for a human, as for a thinking creature. This is caused by the fact that human is intelligent, smart, and cognitive by its nature. It follows from “the natural human right to freely express one’s opinion, dictated by the wit as a truth, whether it makes a mistake or not.”[2], freedom of expression is a crucial for self-realization of a human; however, freedom of expression is based on natural requirement of expression of attitudes and ideas as a natural right, but also the natural requirement to assure others in their truth, to share them to others. In addition, the ideas and opinions of other people play an important role in shaping their own worldview. These two interlinked human requirements were perfectly interpreted by T. Sanlon, a well-known specialist in American constitutional law. “The aspirations of a person to provide, impress, inspire, or inhale something or someone has always been emphasized in social circumstances and had a great influence on the development of events. Killing this right, the suppression of this ability is the same as stifling one of the most exciting aspects of human nature. In the same way, the right and the ability to receive ideas or inspiration from someone else are of paramount importance for establishing personal opinions, on the basis of which our self-consciousness is formed”.²³ Based on the above, it becomes clear, that freedom of expression is not only a way of self-expression, also a prerequisite for the development of all kinds of free human development. But freedom of expression has other options as well. One of its most important potential is that it is a tool for discovering and without achieving truth, no progress can be made. That is why it is unacceptable for the totalitarian governments. If the government lacks the pluralism of ideas and attitudes, that represent legitimate interests, it is unimaginable to make significant progress in the development of democracy. Since freedom of expression is the most important issue of public interest, it is necessary to hold public discussions on specific issues in order to maximize the assessment of all legitimate public views on the

²² Sara Hugelier, "Freedom of expression and transparency: two sides of one coin, 14 November 2014

²³ Sanlon T. “Theory of freedom of expression”1972. p.204, about the meaning of the expression of ideas see also Redish M. “The value of free speech” 130 U, 1982, p.59

development of democratic processes, to achieve specific goals and to protect all legitimate human rights as much as possible. This is directly related to protection from the threat of suppression of this freedom. The United States' famous human rights activists and prominent public figures Oliver Wendell Holmes and William Brandeis clearly demonstrated the idea of freedom of expression as a means of achieving public interests. Holmes, who was a judge of the United States of America, suggested a wonderful metaphor: "The Market of Ideas." According to his opinion, "people believe that the best way to achieve the common well-being is to exchange ideas", he said "the best measure of truth is a form of self-recognized opinion in the conditions of market competition".²⁴ Holmes came against the punishment of expression of the false and outraged views and he thought that the idea of free speech was to give it a chance and an opportunity to act.²⁵ The threat of suppressing of ideas represented a real danger to Brandeis as well: "those, who have obtained freedom, trusted, wisdom would prevail over Wisdom will prevail over arbitrariness. They appreciated both the goal and the means. They believed that freedom was a key to happiness, just as courage - to freedom; They believed that freedom of thought is an indispensable means to uncovering and spreading political truth, and that fear generates depression, depression - hatred, and hatred threatens the integrity of the state, and the path to security passes through free thinking."²⁶

Brandeis stressed the importance of freedom of expression for the functioning of representative democracy. He easily justified it: "Democratic self-government depends on the ability of voters to choose representatives who can best express their opinions and interests, as well as on the ability of representatives to understand the problems of their voters."²⁷

²⁴ S. Frankovsky, R. Goldman, E. Lentovsk- US Supreme Court about Civil Rights and Freedoms

²⁵ Gitlow H. New York, -1925, *Abrahams v. the United states*, 250, 49, 61 6, 613, (1913) p.630

²⁶ *Whitney v. California* 274 Us, 357-(1927), p.376

²⁷ *Whitney v. California* 274 Us, 357-(1927), p.375. Such double vision of freedom of expression in the 60s of the 20th century was finally established in the political and legal intellection of the United States and public consciousness. That is why when the US Congress adopted an act on anti-government activity, which was spreading any false, offensive, preliminary awareness statements and intended to disseminate fraudulent information against the US government, which was followed by stir, the Virginia State Assembly declared that "this act caused general anxiety, because it was directed against the right, which was fairly considered to be the means of protection

Initially such a double perception of freedom of expression was originated in Europe and this was the main argument for the recognition of freedom of expression in these European countries.²⁸ For example, the well-known experts of European law, D. G. Harris, M. O'Boyle, and S. Warbrick, point out that freedom of expression plays a central role in protecting of the rights provided by the Convention.²⁹

When we touch freedom of expression, three principal documents may be emphasized: The European Convention for the protection of human rights and fundamental freedoms, the International Convention on the Eliminating of all forms of racial discrimination and the International Covenant on civil and political rights.

According to the double vision of freedom of expression, European human rights law is full of the ideas of its universalism. This is clearly defined in any court decision of the European Commission in accordance with the freedom of expression and in cases where the latter is a party to a conflict of values. The European Court called the freedom of speech one of the main prerequisites for the progress of a democratic society and every individual.³⁰

This ambivalent vision determines the specifics of the relevant problems, as well as the main approaches, criteria or standards that guide the European Court of Human Rights in elaborating various positions in the development of the relevant problems. Particularly clearly, these relations are revealed during the consideration of those cases that relate to media freedom, since it is mainly through the press, television or radio broadcasting, when they fulfill their functions, ensure open public debates on the issues of public interests, without which there is no democratic society. The decision of the European Court in one of the cases was: "not only the press has the right to disseminate information and ideas, but people also have the right to accept them".³¹ Furthermore, this provision has been repeatedly quoted in other judgments and decisions of the court. By this formulation, in fact, equal force has

of other rights. Because of this unpopular act President and majority of the Congress lose the next election

²⁸ Freedom of expression in the context of fair balance of Conflict values, Eva Gotsiridze, Tbilisi, 2007 p. 6

²⁹ D. G. Harris, M. O'Boyle, S. Warbrick, Law of the European Convention on Human Rights, Butterworths, London, Dublin, Edinburgh, 1995, p.372

³⁰ Handyside v. the United Kingdom, Judgement of 7 December 1976, Series A, No 24, para 49

³¹ Lingens v. Austria Judgement of 8 July, 1976, series A, No 103, par. 41

recognized between the right to freedom of expression, (interest) of individual and common public interest.

Based on the foregoing, freedom of speech as an individual interest is not only interconnected with public interests, but at the same time is in itself a public interest. Without freedom of speech, there cannot be any democracy and the first thing an autocrat makes is restriction of freedom of speech. Dual load of this correct condition has dual meanings. Therefore, when freedom of expression is contrary to other interests in the conflict of values, this fact should be taken into account. Accordingly, it becomes clear, that the need to restrict the rights of an individual is more difficult to reason and requires more subtle justification than other rights. On the other hand, freedom of expression has the greatest potential to invade other rights and interests, including within the framework of a convention, because of its ontological nature. This is the reason for the difficulties in achieving an "equitable balance". Some kind of "expression" can cause a dangerous social outcome. For example, dissemination of incite and criminal calls, such as rebellions and terrorist attacks, racial or religious hatred that can cause irreversible consequences. The threat increases significantly when respective views are spread through mass media, which increase the threat of potential loss in vast auditorium of mass media. As D. G. Harris, M. O. Boyle and S. Warbrick refer mass media is capable of violating other interests in much more repellent way.³² It is obvious that the state must avoid such consequences. This is a kind of paradox, when freedom of expression, recognized as a prerequisite and the basis of a democratic society, may pose a threat to public interests and limit their protection. This is originated from the special reference of Article 10 of the Convention on the relevant "duties and responsibilities" of the entities enjoying the freedom of expression. The fact such a reference to the Convention is only in relation to freedom of expression and not in respect of other rights which can also be restricted to the protection of public or other legitimate interests.

³² see D. G. Harris, M. O'Boyle, S. Warbrick, *Law of the European Convention on Human Rights*, Butterworths, London, Dublin, Edinburgh, 1995, p.376

4.1.The specifics of freedom of expression

Freedom of expression is characterized by specificity: – on the one hand, it is of particular importance for the functioning of democratic processes, on the other hand and the capable to intrude in other interest, it becomes much more difficult to determine the equity of balance in the case of opposition this right to other values; it's complicated to assess, whether state interference in the execution of freedom of expression was justified for protecting the respective interests of public or other peoples.

4.2. Actuality of the freedom of speech

The urgency and relevance of this topic is evidently derived from the vital role of freedom of expression in a democratic society, but it is obvious, that it has particular importance for Georgia.

It is clear, that after a long 70-year period of totalitarianism, when freedom was completely suppressed, building a legal democratic government acquired greater responsibility for real provision of this freedom in Georgia. “A real guarantee” does not mean simply declaration of the constitution and laws. This implies the creation of reliable guarantees for the protection of freedom, which in turn, has several directions. On the one hand, it implicates exercising actual, true freedom without sense of fear and a kind of expectation that a person may directly or indirectly become a subject to repression, persecution, harassment, or could be interfered with professional or public success and advancement. On the other hand, it implicates a culture of enjoying the freedom –voluntarily consciously undertaking of commitments and responsibilities, which coexists with the freedom and is indivisible part of it.

All this is necessary for the freedom of expression, as the greatest achievement of democracy, cannot be used against itself.³³ In order to avoid unjustified interference

³³ The author agrees with opinion of PaataTsnobiladze, that it is unacceptable Discrediting of speech and conception. See PaataTsnobiladze, Freedom of Speech indivisible element of a Democratic Political Processes in collection of Human Rights Protection In National And international law. (editor K. Korkelia), Tbilisi, 2002, p. 254

with freedom of expression, as well as to restore and correct violations of rights, it is necessary to introduce reliable guarantees, which is very important.

Issues of press freedom and political speech are particularly important. Because of the vital importance of free exchange of views and the dissemination of information, the European Court opposes such restrictions, applies the highest standards and calls on nation states to comply with them.

Freedom of expression in the press (as well as mass media), despite of actual establishment of freedom in Georgia, unjustified cases of interference in mass media or individual journalists is not fully eradicated yet. On the other hand, freedom seeking Georgian journalists still have insufficient sense of "self-restraint" and "self-censorship"³⁴ and they frequently break the reputation and rights of other persons. An analysis of the relevant practice of the European Court will allow them to analyze when and where the media are provided with unlimited (though it is never absolute) freedom, and when it is limited. Whose criticism is almost limitless, and whose is in a specific framework. Currently, the role of freedom of expression and the media in the context of international terrorism is absolutely necessary to highlight crimes and fighting against terrorism, guarantee the Inviolability of journalists and maintain the confidentiality of journalistic sources. Actual enactment of legislative or other warranties or leverages in this regard are emergency, which would ensure effective execution of rights by the journalists against the interference of stakeholder-state.

In the realm of defense Georgian legislation generally reflects modern international legal tendencies, but it is imperfect, irrelevant with the rest of legislation. There are gaps with provision of restoration and correction of the violated rights. Topic of should be interesting and urgent in terms of legislation and in order the judges and all of them solve legal rights of person to ensure effective protection of freedom of expression even if the legislative gaps are detected on the basis of European court law of human rights either.

Judges and all decision makers on human rights, even in the presence of deficiencies in the law, should rely on the jurisprudence of the European Court of

³⁴ <https://cpj.org/2017/04/self-restraint-vs-self-censorship.php>

Human Rights to ensure effective protection of freedom of expression and its reasonable balance in conflict with opposing interests.

The practice created in line with application of the article 10 of the convention, seemed out to be interesting because of their complexity and diversity as well. There are countless aspects, nuances or specifics, which become subject to different approach. These are the impact of form, means, time or content of the expressed view on the frameworks of its protection. Approach differs due to the field, the respective idea or information is upon, bywhom are they stated, what they are about, what kind and quality of violation takes place and etc. Case of defamation hold their specifics and ones touch upon freedom of TV or radio broadcast, where the issue of interrelation between freedom of speech and licensing of broadcasting by state frequently arises. This kind of specificity and circumstances complexly affect specification of the frameworks of assessment and ultimately to the fact, what kind of interference of state will be deemed "necessary" for democrat society in execution of freedom of expression, whereas a selective measure is an injustice in relation to a legal goal, it is important which criteria and standards will be applied for this purpose, etc.

4.3. Complexity of freedom of expression

The “expression” protected under Article 10 is not limited to words, written or spoken, but extends to pictures,³⁵ images,³⁶ actions³⁷ and even cultural heritage³⁸ intended to express an idea or to present information. In some circumstances dress might also fall under Article 10.³⁹ The Court has never introduced into its case law the notion of “symbolic speech”; though, it protects, under Article 10, the display and

³⁵ Müller and Others v. Switzerland, 24 May 1988.

³⁶ Chorherr v. Austria, 25 August 1993.

³⁷ Steel and Others v. the United Kingdom, 23 September 1998.

³⁸ .Khurshid Mustafa and Tarzibachi v. Sweden, 16 December 2008. The case concerned the evictions on account of their refusal to remove a satellite dish that enabled them to receive television programmes in Arabic and Farsi from their country of origin (Iraq).

³⁹ Stevens v. the United Kingdom, 9 September 1989 (decision).

use of different symbols, such as the red star in Hungary or the Easter lily in Northern Ireland.⁴⁰

Meanwhile, familiarizing up mentioned issues and picking right orientation will become impossible indisputably, unless we become well aware of the system of protection human rights through international tools. Namely, what the principle of subsidy means, European convention is rooted from and what does protection of human rights and fundamental freedoms mean through European convention, how the authority of European court of human rights work and how is the equality of the system of freedom protection with the system of right protection secured by the other articles of convention.

It's evident, that without studying and considering this international-legal interior, it would be hard, if not impossible to familiarize with the problematic of the Article 10 and more curve, unilateral, unfounded precondition will be created upon the principal issue of topic to make unequivocal conclusions.

In fact, the complexity of the case is the specifics of the study, which introduces the approaches, principles, doctrines or concepts developed by the European Court of Human Rights and require the study, comparison and analysis of the courts' extensive practice to address the legal problems. It is also important to develop them, as well as the need to address general or specific issues related to the understanding of the characteristics of case law. It should be noted, that: Article 10 of the convention of Human rights and fundamental freedoms protects the freedom from unjustifiable interference from participant states of the convention.

In every particular case Strasbourg international court oversights, assesses the fact how much was it justifiable to interfere in the freedom of expression from the part of state in order to protect the rights and interest of a person for the case at hand. In the meantime, International court of Strasburg doesn't alter the national courts and is not a supreme instance to them.

⁴⁰ .Vajnai v. Hungary, 8 July 2008 and Donaldson v. the United Kingdom, 25 January 2011 (decision).

5. The basic conceptual approaches

The basic conceptual approach is determined by its value in a democratic society and its role in achieving the goals proclaimed in the preamble of the convention. It depends not only on how the convention article is interpreted by itself, but what is the angle of vision in relation to individual issues. The approach is as follows: the European Court of Human Rights gives a vital role to freedom of expression for a democratic society and considers it as a cornerstone of democracy, premise of progress and development of each individual. The courts jurisprudence is inspired by this spirit to use Article 10.

Freedom of expression, as it is determined by Article 10 paragraph 1, is the main support of the democratic society, prerequisite of its progress and development of each individual. The first paragraph defines the defense of freedom; Paragraph 1 envisages for the three components of the right to freedom of expression.

5.1. Freedom to hold opinion

The article 10 guarantees freedom of opinion, and it is a prerequisite for other freedoms, and it protects in the sense that the possible restrictions set forth in paragraph 2 do not apply. As stated by the Committee of Ministers, “any restrictions of this right will not correspond to the nature of a democratic society.”⁴¹ States should not try to inspire their citizens, and they should not be permitted to distinguish between those who hold this or that opinion. Besides, the promotion of unilateral information by the state can be a serious and intolerable obstruction to freedom of opinion. Freedom to hold opinions is a prior condition of the other freedoms guaranteed by Article 10, and it enjoys almost absolute protection in the sense that the possible restrictions set forth in paragraph 2 are inapplicable. As stated by the Committee of Ministers, “any restrictions to this right will be inconsistent with the nature

⁴¹Report of the Committee of Ministers in “Theory and Practice of the European Convention on Human Rights”, P. Van Dijk and G. Van Hoof, Kluwer, 1990, p. 413.

of a democratic society”.⁴²

“States must not influence the political and other beliefs of their citizens and give advantage to people according their belief. Furthermore, conducting only one-sided information can injure the right of freedom to hold opinion.”⁴³

Freedom of receiving information and ideas has the greatest importance for the political life and democracy of the country. Free elections cannot be held without the right to receive and disseminate information. Fair criticism of the government cannot be realized without this right.

The search for truth refers to the competitive arguments and ideals that lead to the discovery of truth. When all ideas are heard freely, “the jury of the public will make its verdict and choose the version of opinion and would prefer the truth.”⁴⁴

The role of freedom of expression in democratic self-government is best expressed by Lord Stein: “The free flow of information and ideas informs political debate. It is a safety valve: people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice in the country”.⁴⁵

5.2.Freedom to seek and receive information

The right to freedom of expression also means freedom to seek and receive information. This is the main component of democratic governance, since it is not possible to provide participation assistance decisions without adequate access to information. For example, the disclosure of information on human rights violations in some cases may be provided by the publication of information held by state bodies. Access to information can contribute to justice and redress, especially when it comes

⁴²Report of the Committee of Ministers in “Theory and Practice of the European Convention on Human Rights”, P. Van Dijk and G. Van Hoof, Kluwer, 1990, p. 413.

⁴³ A handbook for legal practitioners Dominika Buchavska-siniarska, chart 1. P. 13

⁴⁴ Hargreaves R (2002), The first freedom: A history of free speech. Phoenix Mill, UK: Sutton Publishing Ltd. p 302

⁴⁵ R. v Secretary of State for the Home Department, ex p Simms [2000] 2 AC 115 at 126 (HL)

to gross human rights violations.⁴⁶ The UN Human Rights Council believes that the public and individuals have the right to have access to information that relates to actions and decision-making in their government processes. For example, the publication of information on human rights violations may sometimes be accompanied by disclosure of information that is available to government agencies. Access to information can help restore justice and redress, especially if there has been a gross violation of human rights. UN Human Rights Council states that people have the right to have access to information regarding actions and decision-making processes of their government⁴⁷.

5.3. Freedom to impart information and ideas

The freedom to disseminate information and ideas realizes the freedom to receive information and the news. This is true to print media as well as broadcast media. Regarding the latter, the Court stated, that States cannot interfere between the transmitter and the receiver, as they have the right to come into direct contact with each other in accordance with their will.⁴⁸ According to decision of the court, in economic matters domestic authorities enjoy a broader margin of appreciation, although freedom of dissemination of information and ideas on economic issues (commercial speech) is also guaranteed by article 10.⁴⁹

The values of art and representation play a significant role in the exchange of ideas and opinions, which is an essential component of a democratic society. Freedom to criticize the government was clearly endorsed by the Court in 1986: the press is obliged to "disseminate information and ideas on political issues as well as on other issues of

⁴⁶ EU Human Rights Guidelines on Freedom of Expression Online and Offline Brussels, 12 May 2014 p.3

⁴⁷ <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf> 5 A/HRC/RES/12/12

⁴⁸ *Groppera Radio AG and Others v. Switzerland*, 28 March 1990 and *Casado Caceres v. Spain*, 24

⁴⁹ *Markt Intern Verlag GmbH and Klaus Beermann v. Germany*, 20 November 1989; *Krone Verlag GmbH & Co. KG v. Austria (No. 3)*, 11 December 2003, paragraph 31.

public interest." Not only had the press had the task of disseminating such information and ideas: the public also has the right to receive them."⁵⁰

In accordance with demands of Article 10, paragraph 2, it involves not only such kind of information, or ideas, which is met kindly, is harmless, or neutral, but also those, which are offensive, shocking, or disturbing for states or some part of the community. Such are demands of pluralism, tolerance and wide outlook, without of which there is no democratic society. The second clause defines the circumstances in which a state can legitimately embark in the exercise of freedom of expression. Attach such importance to freedom of expression, especially its second aspect (as to the mean of self-realization) originates from 11th article of Humans and Citizens Rights French declaration in the Europe, according which the right of human of freely expressing his or her opinion, was the most valuable right.⁵¹

Ensuring this freedom in a democratic society has gained more value. It is considered, that it is unimaginable normal and active functionality of democratic society, as well as protecting supremacy of the law and other democratic values, included human rights, without of this freedom. As Voldahaber noted during his speech at Istanbul University (April 9, 2002), "Democracy is not effective without the rule of law, and the rule of law - without democracy".⁵²

6. Freedom of expression in the system of the Convention

The task of protecting democratic values is based on the European Convention for the Protection of Human Rights and Fundamental Freedoms.. Such a perception of freedom leads to general approaches, the purpose of which is to protect more effectively freedom of expression on the basis of the convention and prevent its unreasonable restriction.

⁵⁰ *Lingens v. Austria*, 8 July 1986, paragraph 41; *Şener v. Turkey*, 18 July 2000; *Thom v. Luxembourg*, 29 March 2001; *Marônek v. Slovakia*, 19 April 2001; *Dichand and Others v. Austria*, 26 February 2002.

⁵¹ French declaration of the right of a Man and of the citizen of 1789, art 11.

⁵² L. Wildhaber, United Kingdom, Freedom of expression under art 10 of the European Convention on human rights, April 9, 2002.

The interpretation of article 10 is wide, paragraph 1; and as to paragraph 2, vice versa, it has narrow interpretation; confirming the demand for restrictions. The European court confers wide understanding by its jurisprudence to the content of article 10 paragraph 1 of the convention and has established, that it protects not only the contents of related “ideas” and “information”, but also right on research, partly right on availability, as well as to negative freedom of expression.⁵³ On the other hand the Court has established, that restrictions foreseen by paragraph 2 should be elucidated narrowly, whereas necessity in a democratic society should have been set faithfully and convincingly. “Freedom of expression subordinates to several exceptions, which should be explained authentically”⁵⁴. When the case concerns on rights guaranteed by 10 articles 1 paragraph of the convention, control should be strict, based on their importance. That is what the court has mentioned repeatedly. The necessity of restriction should be established faithfully.⁵⁵

6.1. Article 10 of the EC on Freedom of speech and its Interpretation

1. Everyone has right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the

⁵³ See Oberschlick, par.37, Leander, par.74 Gaskin, 52, Karatz 49

⁵⁴ Observer and Guardian, paragraph 59, Sunday Times #2, paragraph 50, Thorgeir Thorgeirson paragraph 63, Nilsen et Johnsen, paragraph 43.

⁵⁵ Radio ABC, paragraph 30, Otto-Preminger Institute, , paragraph 50, Informationsverein Lentia paragraph 35.

protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.⁵⁶

The definition of restriction to freedom of expression means at the same time determining of the framework of its protection. Therefore, despite certain conditions, it is advisable to say that freedom of expression is protected, under which the restriction cannot be considered unreasonable in appropriate circumstances. Article 10th of the European Convention for the Protection of Human Rights and Fundamental Freedoms determines the restriction of freedom of expression when there are three incentive conditions for restricting paragraph 2. The restriction must be provided by law to serve any legitimate interests specified in paragraph 2 and shall be necessary for a democratic society. Protecting these conditions requires examination in each case and is always associated with a specific context. Thus, if the restriction is considered fair, it is determined by the circumstances of the case. Therefore, the general facts established by the Convention are not stable; they are changeable and depend on many factors. Moreover, neither its minimum nor maximum limits exist; some “expressions” are not affected by Article 10 of the Convention. Notwithstanding that paragraph 1 does not consider any restrictions. Sometimes a very serious state intervention in ensuring freedom of expression can be considered justified, sometimes vice versa, very little intervention can be assessed unjustified. Although mentioned above does not mean, that according to the relevant jurisprudence the scope to freedom of safety (or restriction) are not predictable enough, and it is very difficult when and what conclusions will be drawn and when these conclusions will be considered justified or unjustified. The European Court, through its jurisprudence, has formed many approaches, principles, concepts or evaluation criteria, which it uses to protect public figures or other persons in assessing the reasonableness of restricting this freedom. It has defined a number of factors, existence which effects in favor of defending or restricting, and thus made it more predictable within the scope of the Convention. The European Court of Human Rights through its precedential law made clear to all the modern standards of European law and this contributed to the dissemination and

⁵⁶ https://www.echr.coe.int/Documents/Convention_ENG.pdf

promotion in the Contracting States of the Convention. We can say in advance, that general standard is high enough. The different spheres are defended by different degree. The spheres, which are defended most of all, the degree of defense never is absolute (the only exception is human right to have own opinion). The possibility of restriction only human right considered by Article 10, paragraph1, does not apply to it.

Let's overview these basic approaches, which are used by European Court towards freedom of expression and these main factors, which affect the determination of the frameworks of protection and, accordingly, the justification for its restrictions.

6.2. Justification for interference with free speech

To determine rigorous criteria for evaluating the conditions of the restriction, which is considered by the paragraph 2, The European Court found that the requirement to restrict freedom of expression would only be considered satisfactory, if such kind of law is achievable and foreseeable, which evidently regulates issues of state interference, does not create preconditions for his arbitrary use, provides guarantees on rights of protection and gives citizens a chance. This is the case when state clearly regulates interference to freedom of expression, does not create prerequisites for random use, foresees guarantees protecting of the rights and gives chance to citizens to reconcile their activities with it and foresee expected legal result.

The European Court found that the condition of the restriction, which is necessary in a democratic society, means sharp social needs, and an adequate and sufficient basis is necessary for recognition. It also set a rather high standard. That's true, it does not fall within the scope of "obviously obligatory" or "extremely needful", but it is much higher than only "desired", "acceptable", or "necessary".⁵⁷

In addition, the European Court established a requirement of proportionate restrictive measures in relation to the intended legitimate goals. The existence of urgent social

⁵⁷ Janovski, paragraph 30, Rekvenyi paragraph 42, Ozturk, paragraph paragraph 64, Zana, paragraph 51, Ahmed, paragraph 55, Hertel paragraph 46

needs is not yet sufficient to recognize the violation of Article 10 of the Convention. It is without a doubt that there was a sharp public need for such an intervention, such a restriction of rights that has been realized. It should be connected with it and really serve it, should not be excessive and superfluous. The requirement of the European Court is that when there is an alternative means of restricting freedom, the state must take steps to select the least restrictive measures. To justify the limitation, the arguments of the state must be sufficient and relevant to paragraphs of the Article 10 of the Convention.

The action of appealed case of the intervention must be assessed depending on whether it was a proportional legal goal, and the arguments cited by the state to justify it are sufficient and compatible with the criteria of paragraph 2 of Article 10 of the Convention. The European Court must be convinced that the national state has used rules that are in accordance with the principles of Article 10 of the Convention and were subject to an acceptable assessment of the facts.⁵⁸ In essence, the small possibility of restricting freedom of expression and, consequently, the need for high standards of defense indicates the formula of the “Handy side”: offend, shock, or disturb. In the above explanation, the European Court emphasized that offensive, amazing or embarrassing ideas and even information may be protected and these characteristics, taken separately, were not a sufficient condition for recognizing the need for a restriction.

6.3. Positive obligations of the contracting states

Based on importance regarding freedom of expression, the European Court of Justice imposes positive obligations on contracting states in order to really and effectively

⁵⁸Rekvenyi p. 42, Ozturk p.64, Zana p. 51; Shmed p. 55; Hertel p.46; Wille, p.61; Janovski, p.30; Ceylan, p. 32; caratas p.48; Erdogan et ince p.47; Baskaia et Oksuoglu, p. 61; Surek #1, p 58; Incal p. 48

ensures these positive obligations. On December 16, 1966 in New York, the UN General Assembly adopted two more important documents - the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These documents include all rights that are contained in the Universal Declaration of Human Rights, with the exception of property rights and a declaration called International Human Rights Law.⁵⁹

In the opinion of the European Court, to ensure these obligations without obstacles, is not always enough to fulfill only negative duties or non-interference in the exercise of this freedom, sometimes the task of ensuring real freedom of expression requires the adoption of positive protection measures.

According to precedential law of the European court, the state is imposed to adopt positive duties, prevent excessive or discriminative restrictive practice, by the internal regulating authorities and procure effective remedial regime for the correction of violated freedom of expression. The state is imposed to provide positive duties even then, when the danger for restricting this freedom comes from a private person.⁶⁰

At the same time the Court considers, that “positive duties” in compliance should not be understood as imposing to the state unbearable and superfluous burden.⁶¹

“The convention for the protection of human rights and Fundamental freedoms –The European convention of Human Rights is the most important form of expression of commitment of the member states of the Council of Europe to the values of democracy, peace and justice and to respect through them for the fundamental rights and freedom of the individuals living in this societies.”⁶²

⁵⁹ <https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>

⁶⁰ See *de Geillustreerde Pers, v Netherlands*, 1976, Com. Rep. p.88, *Wingrove v. the United Kingdom*, 1994.

⁶¹ *Ozguir Gundem* par. 43

⁶² *Introduction to European Convention on Human Rights – Collected texts, Council of Europe Publishing, Strasbourg*, 1994.

6.4. Relationships between the European court and the National courts

It considers the decisions of national courts in the context of article 10 only to establish the principles of freedom of evaluation. First of all, national courts assess the “Justification” for interfere in the human right to the protection of certain legitimate interests. First of all, national courts assess the legal “Justification” propriety for interference in the right of individual to protect legal interest. In the context of Article 10, the clarification of this “justification” means whether interference with the rights of individuals really served to achieve relevant legal goals, whether it was necessary to “intervene in a democratic society” aimed at protecting goals, and whether it was proportional. The history of the discussion of the above issues by the Strasbourg International Court testified to the “justification” of interfering with the rights to freedom of expression characterized by many different approaches. In several cases with varying degrees of severity, a justification clause with rights intervention is requested. However, the principled conceptual approach is permanent: any intervention in the freedom of speech by the state is considered as intervention. This is the start point. Afterwards, it is assessed whether it was justified or not. The main trend is stated in that: due to its significant importance, freedom of expression is frequently granted the privilege in terms of opposed values and for operating the democratic processes. Strict interpretation of provisions are taking place in a narrow manner and ultimately, the fact, when the restraint of freedom of expression is necessary for democratic society and fair to the legal goal set, connects with less cases.

The International Court of Strasbourg has demonstrated the need to use the highest standards in evaluating freedom of expression many times when creating its judicial law.

The underlying principle of this justification is as follows: freedom of expression is one of the foundations of a democratic society, the exceptions described in paragraph 2 of Article 10 of the Convention should be explained very narrowly, and the “necessity” of restricting this right is scrupulous, true and convincing. The topic of restricting public or other legal interests actually means the problem of security within its framework. Freedom of expression, protected by paragraph 1 of Article 10 of the

Convention, and the possibility of limitation and condition are considered by paragraph 2.

7. The EU directions on freedom of expression

- The EU systematically upsurge the issue of freedom of expression at various levels of political dialogue, including through its human rights dialogues and consultations with partner countries. The EU Special Representative for Human Rights (EUSR) raises issues related to freedom of expression and media freedom during official visits to partner countries and in human rights dialogues. The actions below are priorities of the European Union in the area of freedom of expression:
- Fighting violation, victimization, disturbance and deterrence of people, journalists and other media actors among them, because of their realization of the right to freedom of expression online and offline, and inhibiting indemnity for such unlawfulness;
- Encourage laws and practices that protect freedom of opinion and expression;
- Encourage media freedom and pluralism and fostering an understanding among public authorities of the dangers of unwarranted interference with impartial/critical reporting;
- Supporting and respecting human rights in cyberspace and other information and communication technologies;
- Promoting best practices by companies;
- Promoting legal amendments and practices aimed at strengthening data protection and privacy online/offline.

Freedom of opinion and expression are essential in themselves to promote self-realization and autonomy of people. Freedom of expression, including artistic expression is important for the development and manifestation of the personality of the individual in society.

The EU believes that the safety of journalists and other media representatives is of the

greatest importance. The EU intends to take all necessary steps to ensure the protection of journalists, both in terms of preventive measures and in order to effectively investigate violations.

The EU has formulated its action plan in the following form:

a) Support action by third countries to ensure legal, policy and regulatory frameworks based on international standards that protect and promote freedom of expression and information.

b) Support actions by third countries to enact necessary procedures to facilitate individuals to receive information, including by freedom of information laws

c) Promote the independence of and the protection against political or commercial interference of all public bodies that regulate media, broadcasting or telecommunications.

d) Support third-country actions to increase media ownership transparency, take action against media concentration and fair and transparent distribution of licenses, as the associated risks intensified in the digital age.

e) Encourage actions by third countries to improve transparency and fair use of public money in the media sector.

f) Support actions by third countries aiming at the strengthening of journalistic and editorial independence, including through legal and financing mechanisms reinforcing financial self-sustainability of both public and private media.

g) Encourage in third countries, of measures, voluntary, self-regulatory initiatives and arrangements such as media ethic codes, which strengthens press liability.

h) Stimulate free and pluralistic announce on elections, also equal political party access to public service media during election campaigns.

I) encourage independent organizations to actively monitor the situation of media for freedom and pluralism in different countries.⁶³ Free, Multifaceted independent media are the most important for any society to protect freedom of opinion and expression parallel to other human rights. By facilitating the free interchange of information and ideas on matters of public interests and by guarantee transparency and liability,

⁶³ EU Human Rights Guidelines on Freedom of Expression
Online and Offline FOREIGN AFFAIRS Council meeting Brussels, 12 May 2014. See p.8

independent media presents the support to society. Without freedom of expression and independent media, there are unthinkable informing citizens. Guided by the relevant provisions⁶⁴ of the Treaty on European Union (TEU) and the Charter of Fundamental Rights of the EU and in accordance with their international and European human rights obligations⁶⁵, the EU is committed to respecting, protecting and promoting freedom of opinion and expression within its borders.

In the field of protecting freedom of speech EU intends:

“In the field of protecting freedom of speech, the EU intends:

In the area of protecting freedom of speech, the EU intends:

“battle cruelty, ill-treatment, competitive pressure and deterrence of people, journalists and other media actors among them, impede exercising of the right to freedom of expression online and offline and combating exemption from punishment for such kind of crimes. States must prevent violence and to guarantee a safe environment for journalists and other media representatives, let them fulfill their work independently, without undue interference.⁶⁶

Encourage laws and practices that protect freedom of opinion and expression;

Arouse freedom and pluralism of the media, pluralism and uphold mutual understanding among public bodies of the dangers of unfair intercession with dissemination of the impartial and critical publicizing;⁶⁷ Guarantee and protecting human rights in cyberspace and in the other field of information and communication technologies. Continue work towards maintaining and strengthening the multi-stakeholder model for the governance of the Internet.

⁶⁴ Articles 2, 6, 21, 49 of TEU and articles 7, 8, 10, 11, 22 of the EU Charter of Fundamental Rights. All EU Member States are State Parties to ICCPR and ECHR.

⁶⁵ See annex II for a non-exhaustive list of international and European norms and standards on freedom of opinion and expression

⁶⁶ UNGA Resolution A/RES/68/163 "The safety of journalists and the issue of impunity"

⁶⁷ As set out in the June 2013 Council conclusions on the EU Cyber Security Strategy.

8. Facets of freedom of speech

There is a completely special definition of “acceptable criticism” in relation to government officials and judges. Government officials, especially judge's freedom of expression is limited, unlike politicians and individuals. They carry the so-called “commitment of restraint.” Determining the categories of protected and unprotected speech is crucial for the architecture of the sentence of freedom of speech, since in this case clearly distinct forms of expression may differ from each other.⁶⁸

8.1. Artistic speech

One of the forms of speech is an artistic expression or artistic freedom of speech⁶⁹ which is a problematic area. There is wide agreement that the art of speech is protected speech. Actually the artistic speech can be considered as forming one of the entities that is the core of protected speech⁷⁰ Contribute to interchange of ideas and opinions that are essential in democratic society.⁷¹ There are several reasons why art is special, and accordingly, the right to protection is granted as freedom of speech. Art is involved in a creative process that is central and unique to human thinking. Art is worth more than ordinary rational or cognitive processes. Art belongs to the visceral matter, it is irrational, not cognitive, and it does not obey the logic, it illuminates the depth of the human person. Art functions as a private sphere of freedom. In this private sphere of freedom, a person can reflect on the essence of human existence, free from the pressure or sanctions of normal social forces. Each of these excuses suggests that the art of speech requires protection.⁷² Despite these formulations of artistic speech, expression often finds the center of controversy in its content or presentation. Artistic speech, of course, is not always pleasant. There is no satisfactory justification for the status of art

⁶⁸ ART AS SPEECH EDWARD J. EBERLE, p.7 2007-2008

⁶⁹ The First Amendment provides: “Congress shall make no law ... abridging the freedom of speech.” U.S. CONST. amend. I.

⁷⁰ See, e.g., *Abouo v. Detroit Bd. of Educ.*, 431 U.S. 209, 231 (1977)

⁷¹ *Autronic AG v. Switzerland*, judgment of 22 May 1999. Series A. #178Seviyvane.

⁷² ART AS SPEECH EDWARD J. EBERLE, p.6

speech as protected speech.⁷³ Artistic speech is the autonomous use of an artist's creative process to create meaning that manifests itself in the material environment. In other words, the artist's goal is to portray his vision, express his individuality, or transmit a meaning. As for art, we can take note of thinkers like Plato⁷⁴ and regimes such as Nazi Germany⁷⁵ and Soviet Russia,⁷⁶ believed that art could threaten public order. Artistic speech is often evaluated in accordance with generally accepted justifications for freedom of speech, such as the pursuit of truth, the marketplace of ideas, or self-government. But these and most other accepted rationales for speech have been developed and are particularly well connected with political speech. Viewing artistic speech through this lens tends to distort it. Although the art of speech can express the truth, contribute ideas to the market or be political, they are simply some of the qualities that art can exhibit.

The essence of art lies in the participation and manifestation of the human creative process. This is the rationale for why art is a speech of value, art deserves to be a protected speech, although it is not political or religious. Only with a satisfactory substantiation, it is worthwhile for canned art of speech to take its rightful place as one of many valuable connections, form the core of protected speech. We used to hear critical messages through artistic speech. Cinema and theater were often a means of expressing criticism towards privileged people. During Soviet regiments, progressive ideas were implicitly transmitted, which protested against totalitarianism. People laughed and got angry on brutal, corrupt, regressive leaders.

⁷³ See, e.g., *Schad v. Mount Ephraim*, 452 U.S. 61, 65 (1981)

⁷⁴ Plato desired to ban artists from the Republic unless they could be controlled by the Philosopher King. PLATO, *THE REPUBLIC* 80-85 (Comord trans., Oxford 1941).

⁷⁵ Nazi Germany sought to instill an ideal of Teutonic virtue based on hard work, Aryan racial stock, and basic German bourgeois values, and they expected the same of German artists. Hans Grimm's novel *Volk ohne Raum* (A People without Space) gave the Nazis one of their pet phrases, illustrating art's influence, in this case devious. ERNS I ROSE, *A HISTORY OF GERMAN LITERATURE* 309 (New York University Press 1960).

⁷⁶ 3 For the Soviets, "art should serve only to reinforce socialist ideals and thereby inculcate appropriate behavior; nonrepresentational art is considered decadent, bourgeois and dangerous." Nahmod, *supra* note 14, at 225.

Political speech

Expressions about political issues are protected well than creative expression or commercial sphere. Politicians have greater access to disseminating information and more ability to respond to criticism, and therefore the state protects their reputation less than private individuals. Therefore, the state protects them more. In contrast, individuals are completely vulnerable and have no means of protection. Politics is a matter of public interest, so there is little opportunity left to restrict the dissemination of ideas or information. Especially appreciated is the freedom of speech of the representative, who is elected by society and who, according to his mandate, is obliged to promote and expose urgent issues for the public. Political speech speaks to our desire to affect the public policies and character of the society in which we live. Political speech is fundamentally the silhouette of the public persona we take on or hope to be. From the point of view of politicians, the limits of permissible criticism are much wider than those of government officials, especially in relation to private individuals. Sometimes their personal life is considered as a subject of public interest. It is generally accepted that the public has the right to know everything about politicians, because they have taken on the role of governing the state, therefore, they sometimes consider permissible unpleasant and sometimes unfair attacks on authorities and officials, the use of excessive, offensive language. The European Court is inclined to justify the relevant idea or information in a disputed case and refer the relevant expressions to “evaluative reasoning” rather than the transmission of facts.⁷⁷

8.2 Commercial speech

The commercial speech is one of the most specific spheres of freedom of speech. Such kind of a speech also serves to be protected. We need to understand the definition of commercial speech in order to understand its differences from protected expression. Commercial speech is defined as speech that “offers nothing more than a commercial

⁷⁷ Eva Gotsiridze, FREEDOM OF EXPRESSION WITHIN THE CONTEXT OF FAIR BALANCE OF CONFLICTING VALUES p.70

transaction”⁷⁸. This definition has a significant shortage. The distinction between advertising and non-professional commercial speech suggests that both the court and the scientific community discriminate against a statement that is motivated by profit. The speech of each candidate for a political office can easily be considered as self-advertisement. More notable is the viewpoint discrimination that inheres in the prevailing definition. Commitment to free expression both reflects and implements a belief in the ability of individuals to judge persuasiveness of competing viewpoints. For the safety of his product, he receives only the reduced protection provided by commercial speech.⁷⁹

Although in recent years the level of constitutional protection extending to commercial speech has increased significantly, it would be wrong to assume that it has reached the level of full protection. To protect the commercial speech it is necessary to define theoretical and regulatory basis, of recommendations, without which the protection of expression would be meaningless. These regulations state, that adherence to freedom of expression reflects and implements belief in the ability of individuals to judge persuasiveness of competing points of view. The commercial speech presents ideas and information in the commercial field. The basis for the precedent are *Mark Verlag v. Germany*. According to the respondent's mind, the protection of the right guaranteed by Article 10 of the Trading Newspaper should not be distributed, since its publication was supposed to promote the economic interests of a certain group of people (certain traders). The European Court disagreed and suggested that the dissemination of information and ideas in the field of trade was the focus of the article. He called this information "commercial apartments." And noted that Article 10 does not apply only to certain types of information or certain forms or means of expression. In this regard, it is also important to deal with *Autronic AG v. Switzerland*. The European Court had to decide whether to issue a satellite television signal for commercial purposes, protected by Article 10 of the Convention. He believed that such a right falls under article 10, and indicated that

⁷⁸*Virginia St. Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 762 (1976), quoting *Pittsburgh Press Co. v. Human Rights Comm'n*, 413 U.S. 378, 385 (1973).

⁷⁹See Ralph Nader, *Unsafe at Any Speed* (New York: Grossman Publishers, 1965).

this article covers not only the content of information and ideas, but also the means of its transmission or access. There is no clear approach to the language of expression. Article 10 does not provide for the right to express ideas or information in one language or another in which people express their opinions. The Council of Europe pays great attention to the protection of national minorities. (See European Charter for Regional or Minority Languages).⁸⁰ Responsibility for freedom of expression means an equally strong commitment to the principle of democratic self-government. The principles of free speech are based on the dignity of people who, acting within a democratic government, contribute to the achievement of the goals that they intend for a democratic society as a whole. Commercial speech attracts citizens to issues of public concern and debate. Accordingly, government suppression of commercial speech disrupts such progress in the same way as traditionally protected categories of expression. Commercial speech, very similar to speech directly related to collective self-government, both of them believe in the ability of people to manage their lives and right to influence others, who, in turn, have the ability and the right to choose.⁸¹ Listeners benefit from receiving information and opinions about commercial products and services when this information and opinion comes in a form other than commercial advertising. Advertising is usually a form of advocacy and not just a description of an objective fact. Speakers who participate in political debates have their own personal, economic, or ideological plans behind their expression. Their expression, like commercial advertising, is propaganda, not an objective fact. Moreover, like commercial advertising, political advertising can be more compelling than pure information. Commercial speech is very similar to political speech. Advertising is a kind of commercial speech. Advertising can be made live by face to face contact between sellers and buyers. Effective advertising campaign will disseminate information about goods and services products and services to attract customers and generate sales.[1]There are many options for advertising through magazine, TV, radio, directories, online and etc.

⁸⁰The European Charter for Regional or Minority Languages, 1992. ETS 148. 14 HRLJ. P. 148 (1993).

⁸¹ Commercial Speech and the Values of Free Expression, By Martin H. Redish, June 19, 2017, p.5

8.3 Religion speech

In much of English-language journalism in the global news services, much attention is paid to secular ideas, skepticism and disrespect. But the world is not so secular. Faith, its teachings and rituals play a central role in many lives. A free-speech academic Eric Berendt,⁸² summarized argument about offences against religion and public worship: that “society is entitled to, or perhaps even should protect a sense of the sacred. Something valuable is lost if there are no restrictions on what can be said or written about God or religious belief. People’s sincere religious beliefs can get easily insulted. For example, if the caricature of the crucifixion of Jesus will be applied to the politician or public figure, even if the caricaturist did not intend to desecrate Christians’ religious feelings. For some people, episodes of freedom of expression can be perceived as an encroachment on their religion, and at the same time others it can consider that respect for religion unduly restricts their expression. Managing this tension through self-regulation will grow, especially by organizations, which serve online a diverse global audience. The law is gradually moving away from its traditional role as a protector of religious orthodoxy. Not completely or everywhere, but there is a trend. The people of Ireland recently voted from 65% to 35% to exclude from their constitution a criminal offense for blasphemy. Recently, the Supreme Court of Pakistan has repealed the death sentence for blasphemy, which was issued to a Christian woman in 2010. Protests began; the safety of judges was strengthened. Parts of the mobile network were temporarily closed.⁸³ Several European countries, including Austria where the conviction took place, continue to have strong laws against blasphemy. In Austria, Germany and Poland the offence carries a potential prison sentence as well as a fine.⁸⁴ The Strasbourg-based ECHR ruled that Austrian

⁸² <https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199225811.001.0001/acprof-9780199225811>, Freedom of Speech Eric Berendt

⁸³ <https://www.theguardian.com/commentisfree/2018/nov/04/freedom-of-expression-religious-views>

⁸⁴ <https://www.irishtimes.com/news/world/calling-muhammad-paedophile-not-protected-by-free-speech-1.3678825>

courts carefully balanced the applicant's "right to freedom of expression with the right of others to have their religious feelings protected, and served the legitimate aim of preserving religious peace in Austria."⁸⁵ Religious speech speaks of the abstract reverie we are experiencing - or not experiencing - in order to gain access to the world beyond the fleeting rigidity of a normal existence. This was the meaning of the Protestant Reformation: the rooting of human conscience as an indestructible means of communication with God.

8.4 Private and social speech

Notwithstanding that research on private and social speech plays a vital role in the field of communication, often the concepts to which they refer and their operational definitions are not plainly defined..⁸⁶ Each person can express themselves in one form or another, whether in artistic, oral, or written form. However, even though there are various ways to convey thoughts and ideas, the most basic method is verbal communication.⁸⁷ People contact each other by speech — the deal with views, opinions in everyday life. The form of verbal communication between people depends on their culture, intelligence, and ethics. This form is the cell that is the most straightforward component of a wide range of relationships. Besides face to face contacts nowadays, people contact through social media. As in everyday life, expressions in social networks should be in the frameworks of ethics. People are responsible for the protection and implementation of all common standards, which are an integral part of freedom of speech. Public interest issues are not limited to politics and press freedom. If information and ideas are essential to the public interest, this kind of information and ideas find better protection against restrictions during a conflict of values.

⁸⁵ <https://www.dw.com/en/calling-prophet-muhammad-a-pedophile-does-not-fall-within-freedom-of-speech-european-court/a-46050749>

⁸⁶ Private and Social Speech in Communication: Terminology and Distinctive Traits; Journal of Psycholinguistic Research, Vol. 25, No. 4, 1996

⁸⁷ <http://www.myspeechclass.com>

9. Journalists at the forefront of Freedom of Speech

These interests are not solved only in the framework of freedom of politics and the press. Freedom of expression as a specific human right is not the prerogative of either the politician or the journalist. Journalists in their daily lives simply realize the right of every citizen to freedom of speech. "The press plays a pre-eminent role in a State governed by the rule of law."⁸⁸

Freedom of the press enjoys special protection, because it is through the press that issues of public interest are covered, including the sphere of politics. And this is recognized not only as law, but also as duty.⁸⁹ A free press should be accessible to a democratic society. It seeks and disseminates news, information, ideas, comments and opinions and holds those who are responsible. The press provides a platform for a wide variety of voices. States should protect the right of journalists not to disclose their sources, so that journalists can cover matters of public interest without fear of retribution.⁹⁰ Governments should let journalists to work in a free and friendly secure environment without dread of censorship or limitations."⁹¹, keeping people informed and to blame or punish someone for what has occurred. All over the world, journalism goes under fire. While more people have access to information more widely, the political polarization and technological progress has contributed to the rapid spread of hate speech, misogyny and untested "fake news," which often leads to incommensurable confinement on freedom of expression. In an ever-increasing number of countries, journalists face physical and verbal attacks that menace threat to their ability to communicate news and information to the public. In recent times, 44 journalists were killed in several countries, 27 of them were intentionally killed. They all fought to expose criminal elements, to clarify the truth within their legitimate rights for freedom of speech. In the face of such problems, this new volume in the "The Trends in Freedom of Speech and Media Development series offers a critical analysis

⁸⁸ *Castells v. Spain*, 23 April 1992; *Prager and Oberschlick v. Austria*, 26 April 1995.

⁸⁹ Eva Gociridze, FREEDOM OF EXPRESSION WITHIN THE CONTEXT OF FAIR BALANCE OF CONFLICTING VALUES, p. 61

⁹⁰ In response to the UN Plan of Action, an Implementation Strategy 2013/2014 was drafted at the UN Inter-agency meeting (Vienna, November 2012)

⁹¹ <https://www.coe.int/en/web/impact-convention-human-rights/freedom-of-speech>

of new trends in media freedom, pluralism, independence and the safety of journalists.⁹² The world must take care and protect the servants of the free speech and respect their combat and bravery against criminal and corruption.⁹³ Many journalists, media outlets and individuals have used the European Convention on Human Rights to fight for free speech.⁹⁴ The new information technologies, the global, interconnected internet ubiquitous social media platform, and other means were supposed to make censorship absolute. Online and off-line media, TV and Radio broadcasters must comply with all provisions, norms, and laws as are prescribed by the European court of human rights and other European Human Rights Institutes.

As a result of the development of information technology, broadcasting plays a leading role as a more direct and immediate mean of free speech.

9. The system of restrictions on freedom of speech

Paragraph 2 of Article 10 reads:

“The exercise of these freedoms, (that are indicated in paragraph 1), since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.”⁹⁵

The main purpose of the Convention system is that national courts to apply the text of the Convention, developed in accordance with the judicial practice of the Court. That is why national courts are the first and most important instances to ensure the free

⁹² <https://en.unesco.org/world-media-trends-2017>

⁹³ <https://www.eluniversal.com.mx/english/journalism-and-freedom-speech-are-threatened-across-world>

⁹⁴ <https://www.coe.int/en/web/impact-convention-human-rights/freedom-of-speech>

⁹⁵ https://www.echr.coe.int/Documents/Convention_ENG.pdf

exercise of freedom of expression and to ensure that the possible restrictions comply with the requirements set out in paragraph 2, as explained and developed by the Court. Any restriction, condition, restriction, or any form of interference with freedom of expression serves the concrete enjoyment of this freedom.

The availability of public broadcasting means does not contradict article 10 of human rights, but in one case, the Court ruled that the right to freedom of expression would be violated if state stations monopolize state-wide broadcasting.

All of the lawful restrictions serve to interests or values: national security; territorial integrity; public safety; prevention of unrest or crime; health protection;; morals; reputation or rights of others; preventing the providing information obtained in confidence; and maintaining the authority and impartiality of the judiciary.⁹⁶ The main role of Article 10 is to protect the freedom of expression of each person. The interference is required in a democratic society.⁹⁷ Thus, the Court established rules for the strict interpretation of the possible restrictions provided for in paragraph 2. In *The Sunday Times v. the United Kingdom*, the Commission ruled that: “The principle of narrow interpretation encounters certain difficulties because of the broad formulation of the provision itself. Nevertheless, this imposes a number of clearly defined obligations on the authorities. ”restrictions, and these criteria should be understood to such a degree that the language does not go beyond its usual meaning. In the case of exceptional clauses, the principle of strict interpretation encounters certain difficulties because of the broad formulation of the provision itself. Nevertheless, this imposes a number of clearly defined obligations on the authorities.”⁹⁸ In fact, it is acknowledged, a legal standard according to which individual freedom must be balanced with the requirement of the state’s fundamental interest.⁹⁹

Restrictions on freedom of speech are justified:

-If they comply with the principle of legal certainty, predictability, and transparency.

⁹⁶*Observer and Guardian v. the United Kingdom*, 26 November 1991.

⁹⁷*Długolecki v. Poland*, 24 February 2009 and *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995.

⁹⁸*The Sunday Times v. the United Kingdom*, 18 May 1977, report of the Commission, paragraph 194.

⁹⁹A. Rzeplinski, “Restrictions to the expression of opinions or disclosure of information on domestic or foreign policy of the State”, Budapest 1997, in *Monitor/Inf* (97) 3, Council of Europe.

- They follow one of the goals set out in Article 19.3 of the ICCPR; that is, they must comply with the principle of legality.

- If they are justified by necessity and in proportion to the intended purpose (principles of necessity and proportionality).

The Court examines and decides in each particular case whether interference exists, looking at the restrictive impact on the implementation of the right to freedom of expression of the specific measure adopted by the national authorities. Such interference could be many-sided. It is impossible to admit what kind of restriction would take place: restrictions, penalties, or else more. The Court will assess if the interference exists, whether it is permissible. It could be kind of criminal conviction¹⁰⁰ an order to pay civil damages,¹⁰¹ prohibition of publication¹⁰² or any publication,¹⁰³ confiscation of publications or of any other measures through which an opinion is being expressed or information transmitted,¹⁰⁴ refusal to grant a broadcasting license,¹⁰⁵ prohibition to exercise the journalistic profession, a disciplinary penalty,¹⁰⁶ a court's or other authority's order to reveal journalistic sources, sanctioning for not doing so,¹⁰⁷ The announcement by a head of state. It is a recognized right to express an opinion in a collective way. Everyone has the freedom of peaceful assembly and demonstration. This implies the right of people to assemble in public or in private and collectively to protect and achieve common interests. Freedom of assembly and manifestation is the only or most effective opportunity to exercise political, social, or cultural rights. Therefore, the state is obliged not only to protect peaceful assemblies but also to take appropriate measures to ensure the effective exercise of the rights recognized by persons.¹⁰⁸ The right to freedom of assembly and demonstration is not absolute, but the interference with its implementation must meet a number of strict and

¹⁰⁰Barfod v. Denmark, 22 February 1989; Lingens v. Austria, 8 July 1986; Dalban v. Romania, 28 September 1999.

¹⁰¹Muller and Others v. Switzerland, 24 May 1988.

¹⁰²The Sunday Times v. the United Kingdom (No. 2), 26 November 1991; Observer and Guardian v. the United Kingdom, 26 November 1991.

¹⁰³News Verlags GmbH & Co.KG v. Austria, 11 January 2000

¹⁰⁴Handyside v. the United Kingdom, 7 December 1976; Müller and Others v. Switzerland, 24 May 1988.

¹⁰⁵Autronic AG v. Switzerland, 22 May 1990.

¹⁰⁶Wojtas-Kaleta v. Poland, 16 July 2009; Frankowicz v. Poland, 16 December 2008.

¹⁰⁷Goodwin v. the United Kingdom, 27 March 1996 (GC).

¹⁰⁸Guide to assembly and manifestations, <https://gdi.ge/uploads/other/0/672.pdf>, 2018, p 3.

objective criteria. Article 11 protects the right to protest by holding meetings and demonstrations with other people. In some situations, a government agency may restrict your freedom of assembly and association.

This is only the case when the authority can show that its actions are legal, necessary and proportionate in order to:

- Protect national security or public safety
- Prevent disorder or crime
- Protect health or morals, or
- Protect the rights and freedoms of other people.

The action is “proportionate” when it is appropriate, and is no more than necessary to solve the corresponding problem. If person works for the armed forces, the police or the Civil Service, he or she may face a wider range of restrictions.¹⁰⁹

9.1. The right to freedom of assembly and manifestation

Local governments are responsible for the implementation of relevant legislation or standards established by the Constitutional Court of Georgia in practice. The right to freedom of assembly and manifestation is one of the special forms of freedom of expression.¹¹⁰ A meeting is defined as a meeting of a group of citizens in a room or on the street, a demonstration in public places, as solidarity or protest.¹¹¹ According to the Constitution of Georgia, the right to peaceful assembly without prior permission extends to both individuals and legal entities. At the same time, there are categories of certain individuals that are limited in the right to gather / manifest. These include members of the armed forces and the Ministry of the Internal Affairs,¹¹² as well as members of the investigative service of the Ministry of Finance.¹¹³ According to the Law of Georgia on Assemblies and Demonstrations, the initiator of assemblies and

¹⁰⁹ Article 11: Freedom of assembly and association

¹¹⁰ Decision of the Constitutional Court of Georgia # 2 / 482,483,487,502 of April 18, 2011, II. Decision 2. p.4

¹¹¹ Law of Georgia on gatherings and demonstrations, subparagraph "a" of Article 3, Legislative Gazette «Matsne" No. 763 of August 14, 1997.

¹¹² Constitution of Georgia, Article 25, Clause 1, Legislative Code No. 786, August 24, 1995

¹¹³ Decision of the Constitutional Court of Georgia # 2 / 482,483,487,502 of April 18, 2011, paragraph II.

demonstrations or approvers can be a political party, union, enterprise, organization, organization or initiative group of citizens, as well as a specific person. The Constitutional Court decided to expand the circle of persons and established that stateless persons residing in Georgia have the right to unlimited participation in meetings and demonstrations, to be initiators and responsible persons. The organizer is the person appointed by the initiator to organize the demonstration or manifestation. The initiator of the meeting relies on the trustee or a person who is trusted by the manifestation. The meeting/manifestation does not require permission from local or central government authorities. Thus, a preliminary warning should be distinguished from a permit that is only organizational in nature and does not imply permission from the local government, or central state authority whether to hold the meeting/manifestation.¹¹⁴ The sole purpose of the Pre-warning Mechanism is to allow public authorities to take adequate measures to ensure the right to assembly and/or manifestation in the exercise and to protect public order at the same time¹¹⁵ The state must safeguard the security of local and foreign media. However, at the same time, it is unjustified to restrict the right of journalists to mobility and access to information.

9.2. Person's dignity

Human dignity is inviolable. The state is not entitled to deprivation of dignity in part or in full. Dignity is in all people, regardless of gender, age, and culture. The dignity of a person who is spiritually or physically sick must be treated respectfully, also died people, their bodies and memory should be respected.[1] The threshold of all restrictions is not only the protection of human rights but also its dignity. However, these two concepts are indivisible. Previously, the person was protected from the physical intervention of others. Freedom meant direct physical freedom and the ownership of land and other physical belongings. Later in the law entered the concept of the spiritual side, feelings, and intelligence. Gradually, the scale of these rights has

¹¹⁴ Decision of the Constitutional Court of Georgia No. 2/482 483 487 502 of April 18, 2011, II.

¹¹⁵ Sergey Kuznetsov, Application No. 10877/04, January 23, 2009, § 42, Rai and Evans v. United Kingdom (December) 26258/07, 26255/07 from statement No. 17, November 17, 2009

increased, and now the right to life means the right to a good life. The right to property extends to both tangible and intangible values. Since legal protection also concerns the feelings of a person, in addition to physical damage, the threat of such damage was also prohibited. Gradually, human immunity began to spread to his emotions. The reputation of the person was protected; on the basis of the developed legislation, individuals are protected from defamation and offense as well. The intangible values are covered by the law. Emotions, feelings, and thoughts of a person require legal protection and recognition. Gossip is no longer the entertainment of idlers, they have become the subject of trade, in which private business brazenly interfere. Newspapers publish this in order to satisfy obscene interests about people's personal lives through a rude invasion. For a modern person, the right to privacy is becoming more and more important. No one has the right to publish and disclose anyone's records or works without the consent of this person. This right does not depend on the form or content of this right. Lord Cottenham, Charles Christopher Pepys said, that a person has the right to protect the items that are exclusively his property.¹¹⁶

The European Human Rights Council has established a number of restrictions on actions that violate a person's personal space, cause discomfort, and negatively affect his personal life, which sometimes can lead to serious consequences. Under international human rights law, some limits on freedom of expression are allowed, only if it passes the "three-part test" of legality, legitimacy, and proportionality.¹¹⁷

Test 1: "Prescribed by law" -The government must follow a written law that is clear enough.

Test 2: "(A) To respect the rights or reputations of others; (b) To protect national security, public order or public health or morals."

These are the only legitimate reasons for limiting speech. Any restriction must pass this legality test. The following common reasons that governments provide for censorship are not considered legitimate:

"To facilitate the work of the government."

"For the preservation of respect for the leadership of the country."

¹¹⁶ Prince Albert v. Strange, 1 McN. & G. 25 (1849)

¹¹⁷ <https://everyoneshallhavetheright.wordpress.com/3-part-test/>

"For the cessation of lies and irresponsible views."

Test 3: "necessary."

Since freedom of expression is a right that should be respected, restrictions should apply only when it is really necessary. Punishments must be proportionate.

Independent courts must decide whether a government is passing a three-part test. This General Comment of the UN Human Rights Committee, published in 2011 lets prospect this question on article 19 of the ICCPR ¹¹⁸. The interference (meaning “formality”, “condition”, “restriction” or “penalty”) is prescribed by law. ¹¹⁹

10. Unprotected speeches

Unprotected speech means the type of speech that is regulated by law issued by the government. Such speech is completely prohibited in accordance with government regulations. Unprotected speech includes obscenity, obscene words, fraudulent distortion of facts, protection of inevitable lawlessness, and slander. Below we look at more types of unprotected speeches. We review more types of unprotected speeches below.

1.1.1. Hate speech

As we know, the rights set forth in Article 10 establish such restrictions that actually contribute to its full implementation and are based on its principles. Freedom of expression is widely recognized by any significant international instrument in accordance with human rights. According to with the recommendation of the Committee of Ministers of the Council of Europe, adopted in 1997, hate speech is interpreted as follows: hate speech is any form of manifestation or individual speech, that spreads, encourages, supports or justifies racial hostility, xenophobia, anti-Semitism or other forms of enmity. It is rooted in the absence of tolerance, including nationalism, ethnocentrism, discrimination, and hostility towards minorities or migrants. Hate speech is closely related to the violation of freedom of speech, which,

¹¹⁸ <https://everyoneshallhavetheright.wordpress.com/3-part-test/>

¹¹⁹ *Gawęda v. Poland*, judgment of 14 March 2002 and *The Sunday Times v. the United Kingdom*, 26 April 1979.

in turn, is one of the important values and foundations of a democratic society.[1] Article 20 of the International Convention on Civil and Political Rights requires states to prohibit "any propaganda of national, racial or religious hatred that constitutes an incitement to discrimination, hostility or violation."¹²⁰ After the end of World War II, many European countries had seen the spread of hate speech legislation designed to curb the incitement of racial and religious hatred. Originally intended to protect against xenophobic and anti-Semitic propaganda that led to the Holocaust, today national hate speech laws are increasingly used to criminalize speech that is simply considered offensive to race, ethnicity, religion or nationality. Given the hazy standards on which most European hate speech laws are based, in fact, there is not even a universally agreed-upon definition of what constitutes hate speech; it is not surprising that such legislation provokes speech that was probably never intended to be punished. The differentiation between speech, which is considered rude, and speech, which is considered offensive for the purposes of criminal prosecution, is a purely subjective event and a distinction that governments cannot define. The problem of the arbitrariness of these laws is escalated by their selective application: while the European authorities are sometimes reluctant to let Islamist firebrands incite hatred, those who lead a legitimate debate about Islamism are often harassed¹²¹ There are many examples of this in several European countries.

Hate speech is not protected if one of the approaches, formulated by the court presents:

- (1) In terms of the Article 17 (prohibition of power abuse) when the hate speech presents which rejects the fundamental rights of the convention;
- (2) In terms of the paragraph 2 of Articles 10 and 11 which set the basis for freedom of expression and restriction of collection-manifestation. Said approach is employed when hate speech presents although it doesn't come against to the fundamental values of the convention (is not directed for their destroying).

European court of human rights considered countless cases in line with the Articles 10 and 11 of convention and pertained to the hate speech.

¹²⁰ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

¹²¹ <http://www.legal-project.org/issues/european-hate-speech-laws>

In the cases *Vona v. Hungary*, court considered that the Article 11 to the convention was not infringed since the state held the power to take preventive steps regarding political parties and not to allow operation of the association which spread the racial and insulting messages through demonstration.¹²²

In the cases *Feret v. Belgium*, Belgium put the judge on a trial for the slogans and comments spread in the course of his election campaign, which covered the words as follows: “come against Islamization of Belgium”, “Halt false integration policy”, “send non-European job seekers home”.¹²³

The 1997 Committee of Ministers recommendation to incite hatred condemns such expressions and is aimed at developing national legislation in this matter. According to this text, these expressions are often unfavorable, especially if they are disseminated by the media. He also recommends distinguish the responsibility of the author of the statement and the specific media from each other.

The 2007 Parliamentary Assembly considered the need to criminalize allegations that incite hatred, discrimination or violence against individuals or groups for religious or other reasons. The Assembly requested the European Commission for Democracy through Law (Venice Commission) to prepare a report on national legislation in Europe on blasphemy, insults of a religious nature or incitement of religious hatred. Respect for the religious feelings of believers can legitimately be thought to have been violated by provocative portrayals of objects of religious veneration or offensive attacks on religious principles and dogmas; these may in certain circumstances be regarded as malicious violation of the spirit of tolerance, which must also be a feature of a democratic society.¹²⁴

The Venice Commission arrive at a judgment that, in a democracy, religious groups, like any other groups, should tolerate criticism in public statements and discussions regarding their activities, teachings, and beliefs, if the criticism does not constitute deliberate and unjustified insults or hate speech incitement to violation of public order,

¹²² <https://strasbourgobservers.com/2013/08/07/vona-v-hungary-freedom-of-association-and-assembly-can-be-restricted-to-protect-minority-rights/>

¹²³ „Stand up against the Islamification of Belgium”; “Stop the sham integration policy” ; “Send non-European job-seekers home”;

¹²⁴ ECtHR, *Otto-Preminger-Institute*, cit. § 47, EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION)

violence or discrimination against people adhering to certain religions. The European Commission against Racism and Intolerance (ECRI) also recommended criminalizing expressions that can be considered racist, especially when they intentionally and publicly provoke violence, hatred or discrimination based on nationality race, color, language, religion, or national or ethnic origin.¹²⁵

The Court has two ways to assess whether freedom of expression competes with another right guaranteed by the European Convention on Human Rights: use Article 10, as is most often done, or Article 17, which excludes an expression from the protection of a convention if it is intended to destroy another right enshrined in the convention.

The purpose of article 17 is to ensure the preservation of the system of democratic values underlying the convention, in particular by preventing totalitarian groups from enjoying the rights established in the convention in such a way as to destroy the rights and freedoms established by the convention itself. This article has been applied by the Court to statements that convey racial messages about racial hatred, protection of National- Socialism or denial of the Holocaust. The court, for example, stated that freedom of expression can be limited to avoid the spread of Holocaust denial, given that at the same time it is a denial of crimes against humanity and incitement to hatred towards the Jewish people. If the expression is not excluded directly from the protection of the Convention in accordance with Article 17, the Court will consider whether the restriction imposed by the state on freedom of expression meets the following requirements: - restriction of freedom of speech provided by national law

- The reasons for these restrictions are among the legitimate goals set out in Article 10, - They are necessary in a democratic society to achieve one or more of the legitimate goals referred to in Article 10.

The court ruled that restrictions on freedom of expression are permissible only if they meet a “pressing social need” and that the means used were proportionate to the legitimate aim pursued. However, he stated that for this the national authorities enjoy a certain “freedom of discretion”, which will vary from one type of case to another and in any case will be monitored by the Court. However, the Court also ruled that article

¹²⁵ Factsheet, Hate speech. P.2

10 is applicable not only to “information” or “ideas” that are favorably received or regarded as harmless or indifferent, but also to those who “offend, shock or disturb”¹²⁶ the state or any sector of the population.

Since the applicant’s comments fueled a feeling of mistrust, inadmissibility and hatred. Meanwhile, it became clear that his comments could be viewed as a manifestation of racial hatred. Accordingly, the examination of the applicant’s case was justified by the state with the right to avoid unrest and the interests of protecting immigrants. The court issued a similar decision in the *Leroy v. France* case.¹²⁷

However, in the case of *Dzhersild v. Denmark*, the court considered that Article 10 of the Convention was violated, and the documentary film made by the journalist was not aimed at promoting racial views and ideas in general, but only informed the public about this issue.¹²⁸

Hate speech against various minorities is not protected by article 10. In the case of *Weideland and others against Sweden*, applicants were convicted of distributing about 100 leaflets in secondary school, which the courts consider offensive to homosexuals.¹²⁹ The applicants claimed that they did not intend to express contempt for homosexuals as a group, and argued that the purpose of their activities was to begin a discussion about the lack of objectivity in education in Swedish schools. The court emphasized that discrimination on the basis of sexual orientation is as serious as discrimination on the basis of race, origin, or color. He concluded that there had been no violation of Article 10 of the Convention since interference by the applicants in the exercise of their right to freedom of expression was reasonably Swedish authorities consider necessary in a democratic society to protect the reputation and the rights of others.

In the case of *Norwood v. the United Kingdom* In the case of *Norwood v. United Kingdom*¹³⁰ the applicant posted in his window a poster provided by the member of British National Party, representing the twin towers on fire. The picture was

¹²⁶ <https://globalfreedomofexpression.columbia.edu/cases/handyside-v-uk/>

¹²⁷ <http://merlin.obs.coe.int/iris/2009/2/article1.en.html>, 2 October 2008.

¹²⁸ *Jersild v. Denmark* (App no 15890/89) ECHR 23 September 1994

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¹²⁹ *Veideland and Others v. Sweden*, 9 February 2012.

¹³⁰ *Norwood v. the United Kingdom*, 16 November 2004 (decision).

subscribed "Islam from Britain - to protect the British people". The court found, that such a general violent attack on a religious group that links the group as a whole with a serious act of terrorism is incompatible with the values declared by the Convention, in particular tolerance, social peace and non-discrimination. Thus, any expression containing elements of racial and religious discrimination goes beyond Article 10¹³¹

The Court's established position is that those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith.¹³²

On the question- "what is the Hate Speech," we can reply, that, there is no universally agreed definition. Most countries have adopted legislation banning expressions that can be included in this concept, but with slight differences.¹³³

In 1997 the Committee of Ministers of the Council of Europe adopted a Recommendation on hate speech which stated the term "It should be understood as encompassing all forms of expression that disseminate, incite, encourage or to justify various forms of hatred, such as racial hatred, xenophobia, anti-Semitism or based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility towards minorities, migrants and people of immigrant origin."¹³⁴

In its case law, the European Court of Human Rights, without adopting a precise definition, applied this term to forms of expression that spread, incite, encourage or justify hatred based on intolerance, including religious intolerance. The guide notes that, although the Court has not yet considered this aspect, the homophobic speech also applies to what can be viewed as hate speech.

¹³¹.Kühnen v. the Federal Republic of Germany, 12 May 1988 (decision).

¹³² Factsheet, "Hate Speech" p.4-5

¹³³ <https://www.refworld.org/pdfid/4f39419d2.pdf>

¹³⁴ Speech by Ms. Maud de Boer-Bucicchio, the Deputy Secretary General of the Council of Europe.

11.2. Racism

becomes a Nazi and “the Holocaust on your plate”. The court came to a different conclusion in a recent decision regarding the anti-abortion campaign.¹³⁵ Holocaust denial, as a subject of public discourse, was also denied the protection of Article 10. D.I. v. Germany, was fined for making a statement in open session, where he denied the existence of gas chambers in Auschwitz advocate racial and religious discrimination.¹³⁶ Commission held: “the public interests in the prevention of crime and disorder in the German population due to insulting behavior against Jews, and similar offences, and the requirements of protecting their reputation and rights, outweigh, in a democratic society, the applicant’s freedom to impart publications denying the existence of the gassing of Jews under the Nazi regime.”¹³⁷ The commission reached similar conclusions in the Honsik v. Austria¹³⁸ and Ochensberger v. Austria,¹³⁹ where the complainants also denied the existence of the Holocaust and incited racial hatred.

Harming someone's reputation in speech with falsehoods is known as slander, and doing the same thing in writing is known as libel (which sometimes includes speech as well). Any ordinary citizen who can claim to have suffered harm as a result of such defamation may sue. The exception is made for "public persons“, who must also prove, that any such statement was made with "reckless disregard for the truth".

One more unprotected form of speech is “obscenity”, which is a statement, that has no political, cultural, educational or scientific value and that clearly violates generally accepted ethical standards. It should be noted that the definition of a universal concept

¹³⁵ Annen v. Germany, 26 November 2015.

¹³⁶ The Holocaust is defined as “the state-sponsored, systematic persecution and annihilation of European Jewry by Nazi Germany and its collaborators, between 1933 and 1945. Jews were the
www.ushmm.org/education/foreducators/guidelines.

¹³⁷ D.I. v. Germany, 26 June 1996 (decision).

¹³⁸ Honsik v. Austria, 18 October 1995 (decision).

¹³⁹ Ochensberger v. Austria, 2 September 1994 (decision).

of morality in general does not exist. According to the very definition of obscenity, the problem of discrimination of certain expressions determines the generally accepted ethical norms in society. Society (and, therefore, his views) is changing. And talking about a single allocation of obscenity and morality lessen sense. Perhaps, some expression can be viewed in society as obscenity, and from another point of view, it is just an expression of opinion in a sharp form. For this reason, the European Court stated that the national courts in relation with the European Court are in the best position to determine obscenity of this or that opinion.¹⁴⁰ Recently, differences between countries regarding legal definitions and cultural concepts of obscenity have become increasingly important with the development of the Internet. Various decisions have been made, to restrict access to those that were considered obscene Internet sites (for example, requiring libraries to prohibit access to sexual websites). Particularly problematic was the fact that the material that some consider obscene, can be considered as having social significance for others (for example, information about the prevention of breast cancer or sex education). Countries that have achieved some success in reducing access to pornography on the Internet have adopted severe restrictions on most Internet access. Despite these problems, there were movements in Western countries to develop a coherent policy on child pornography.¹⁴¹ A 2007 Parliamentary Assembly Recommendation specified the need to criminalize statements which incite hate, discrimination or violence against individuals or groups for religious or other reasons. The Assembly requested the European Commission for Democracy through Law (Venice Commission) to prepare a report on national law in Europe on blasphemy, insults of a religious nature or incitement to religious hatred. The Venice Commission established that in a democracy any groups, tolerate criticisms in public statements and debates related to their activities, teachings and beliefs, if the criticisms do not form insults or hate speech, an impulse to disturb public order, violence or discrimination towards several groups of people.

11.3. Face-to-face insults

¹⁴⁰ Comments on the Law of Georgia on Freedom of Speech and Expression, nplg.gov.ge

¹⁴¹ <https://www.britannica.com/topic/obscenity>

An expression of this type means insulting a person (for example, bad language, swearing) in both public and personal circumstances. As the European Court has established when dealing with matters related to morality and obscenity, when considering a lawsuit about insulting, the courts should take into account the opinions and views of the public at that time when complaints are being considered. The essence of an insult is not what it literally says, but what it intends to convey. The insult is intended to attack the person, and the recipient believes that the sender intended to convey the insult.¹⁴² Aristotle divided insults into three types; one of them, often translated as “insolence,” demanded superiority to someone through an insult. The difference can be expressed in the form of violence used. Insults between unequal relate to “vertical honor”.

11.4. Threat

It Since the above calls are not protected by guarantees of freedom of speech, the expression containing the threat is also not protected. The threat of life or the destruction of property, if there is a reasonable fear of the threat, is punishable.¹⁴³

True threats are defined as “statements in which the speaker means to convey expression of to committing act of unlawful violence to a specific person or group of persons. ” To be a real threat, "the speaker really should not intend to carry out the threat." True threats are distinguishable from political hyperbole, which is protected political expression.¹⁴⁴ To be a true threat, “the speaker need not actually intend to carry out the threat.” True threats are distinguishable from political hyperbole, which is protected political expression. Intimidation “Since the above calls are not protected by guarantees of freedom of speech, the expression containing the threat is also not protected. The threat of life or the destruction of property, if there is a reasonable fear of the threat, is punishable.

True threats are defined as “statements in which the speaker means to convey the

¹⁴² <file:///C:/Users/MyPC/Desktop/Tamari%201/INSULT.pdf>. P. 139

¹⁴³ Criminal code of Georgia, Article 151.

¹⁴⁴ <https://www.wneclaw.com/firstamendment/truethreats.html>

expression of committing an act of unlawful violence to a specific person or group of persons.” To be a real threat, “the speaker really should not intend to carry out the threat.” True threats are distinguishable from political hyperbole, which is protected political expression. Intimidation “is a type of real threat when the intimidator threatens a person or group of people with the intention of exposing bodily harm or death”¹⁴⁵

11.5. Professional secrecy

Professional secrecy may be defined as a special moral duty, binding in both commutative and legal justice, and inherent in certain offices and functions of a fiducial nature exercised in society, whereby they who fill such offices or perform such functions are obligated to maintain a virtuous or discreet silence with a reference to the confidential information received by them in the course of duty. This type of secret is owned by certain groups of people (eg, a deputy, a doctor, a journalist, a human rights activist, a clergyman) have to maintain it. Professional secrets relate to information, that was entrusted to them during the performance of official obligations, and disclosure of which may damage professional reputation. Relatively, according to this provision, the state is authorized to establish restrictions on such types of expression that are associated with professional secrecy. The notary, as well as officers of the security forces and the security services are obliged to keep information containing secrets.¹⁴⁶ The 1997 Committee of Ministers’ Recommendation on hate speech condemns this kind of expression and aims at providing states with some common criteria for national legislation.

The European Commission against Racism and Intolerance (ECRI), has also recommended criminalizing expressions which considers racist speech, especially when it intentionally and publicly induce to violence, to hatred, or discrimination on grounds of race, color, language, religion, nationality or national or ethnic origin.¹⁴⁷ On 23 November 2001 the member States of the Council of Europe and the other

¹⁴⁵ <https://www.wneclaw.com/medialaw/unprotectedcategories.html>

¹⁴⁶ <file:///C:/Users/MyPC/Downloads/2398-Article%20Text-3411-1-10-20120817.pdf>, p 152

¹⁴⁷ <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance>

States Parties to the Convention, concluded an agreement on Cybercrime.¹⁴⁸ In 2003 the Council of Europe adopted the Protocol¹⁴⁹ to the Convention on Cyber Crime.¹⁵⁰

“As the watchdog for democracies in the Europe, it is the business of the Council of Europe, to make sure that the internet is a space, in which we can work, learn and play with confidence and trust; a space where people are not threatened and discriminated.” – It was admitted on joint OSCE open forum.¹⁵¹

In this area, the application of criminal law is difficult, but the pan-European criminal sanction against incitement to hatred is very important. This is a warning to groups of individuals that effective democracy cannot carry behavior and actions that erodes the base or foundation of its core values: pluralism, tolerance, respect for human rights, and non-discrimination. Anyway it is important that legislation against hate speech is implemented on a non-discriminatory basis.¹⁵²

The unprecedented development of information technology has led to the need to control rights and freedoms of speech in the Internet system. On 28.01 2003 in Strasbourg was adopted “Additional Protocol to the Convention on Cybercrime, regarding the criminalization of acts of a xenophobic nature committed with the help of computer systems”: Council of Europe aims to achieve great unity of its members:

“Recalling that all people are born free and equal in dignity and rights;

Emphasizing the need to ensure the full enjoyment of all human rights without discrimination, Convinced that acts of a racist and xenophobic nature constitute a violation of human rights and constitute a threat to the rule of law and democratic values.

11.6. Proselytism

In an increasingly secular society, proselytism in a social environment is extremely

¹⁴⁸ Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems. Strasbourg, 28.I.2003

¹⁴⁹ 18 ratifications and 18 signatures, Maud de Bouer-Buquicchio, introductory speech

¹⁵⁰ 30 ratifications and 16 signatures, Maud de Bouer-Buquicchio, introductory speech p. 2

¹⁵¹ Internet Governance forum, Vilnius, 14-17 September 2010.

¹⁵² [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2008\)026-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2008)026-e), p.

irrelevant. The problem of proselytism is that religious groups prioritize their needs and pursuit over the public good. At best, doubts about other people's religious beliefs are annoying; in the worst case, this is a split of society. To avoid undesirable proselytism, religious organizations should not play a significant role in public services. They must restrain themselves from any tangible expression of faith.

The kind of unprotected speech is also problem of proselytism, which lies in the fact that religious denominations and religious organizations recognize and must recognize that the condition for public participation is the establishment of priorities for the public wealth.

However, politeness is best recognized not when individuals and organizations are silent about their beliefs, but when they express them openly and with respect, and when others are encouraged to do the same.

Proselytism threatens minorities. In the modern context, they threaten religious and other minorities. The problem of proselytism is not so much the protection of religious beliefs, as in the protection of conflicting social, political or ethical standards. Proselytism of this kind should be confronted and controlled by force of law.¹⁵³

In the case of *Larissis and Others v. Greece* (1998), the European Court of Human Rights considered the issue of condemning several officers of the Greek Air Force for proselytism. The applicants (officers) were members of the Pentecostal church, and their condemnation concerned the preaching activity against members of the public and subordinates in the Air Force. As established in *Kokkinakis v. Greece* (1993), also regarding a conviction for proselytism in Greece, it was clear to the court that the conviction constituted an interference with the rights of article 9. In this case, the question was whether restrictions were necessary to protect the rights and interests of others.

The court found that sentences against civilians were not justified. However, the court upheld the convictions against the subordinate pilots.

“... Hierarchical structures that are characteristic of life in the armed forces can color every aspect of the relationship between military personnel, making it difficult for subordinates to reflect the approaches of a person of higher rank or to abandon the

¹⁵³ The Problem of Proselytism, Paul Bickley, p.9

conversation initiated by him.”¹⁵⁴

Taking into account that national and international law must deliver relevant legal reactions to the propaganda of a racist and xenophobic nature dedicated through computer systems;

the fact of a propaganda such kind of acts often matters to criminalization in national legislations;

11.7. Violations of freedom of speech through cyber systems

If considerate Convention on Cybercrime, which makes available to use for modern and perfected means of international process and persuaded of the need to harmonies substantive law provisions concerning the fight against racist and xenophobic propaganda;”¹⁵⁵ - Is declared in the protocol.

The protocol bind the parties to take legislative and other measures that are necessary to set up, as criminal offenses when they are committed intentionally and without law, the following mode: distribution to the public racist and xenophobic materials through a computer system.¹⁵⁶

The protocol takes into account racist and xenophobic motivated threat;

Racist and xenophobic motivated insult;

Denial, gross minimization, approval or justification of genocide or crimes against humanity;¹⁵⁷

Aiding and abetting: “Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, aiding or abetting the commission of any of the offences established in accordance with this Protocol, with intent that such offence be committed.”¹⁵⁸

¹⁵⁴ European Court of Human Rights, *Larissis and Others v Greece* (140/1996/759/958–960), 24 February 1998. Available at [http://hudoc.echr.coe.int/eng#{‘fulltext’:\[‘‘Larissis’’\],‘documentcol lectionid2’:\[‘‘GRANDCHAMBER’’\],‘CHAMBER’’\],‘itemed’:\[‘‘001-58139’’\]}](http://hudoc.echr.coe.int/eng#{‘fulltext’:[‘‘Larissis’’],‘documentcol lectionid2’:[‘‘GRANDCHAMBER’’],‘CHAMBER’’],‘itemed’:[‘‘001-58139’’]}) (accessed 19.08.2015).

¹⁵⁵ European Treaty Series - No. 189, Strasbourg, 28.I.2003

¹⁵⁶ Article 3 – Dissemination of racist and xenophobic material through computer systems

¹⁵⁷ <https://rm.coe.int/168008160f>

¹⁵⁸ Article 7, ETS 189, Cybercrime, (additional Protocol, 28.01.2003) p.4

11. Legislation of Georgia on freedom of speech

In making its decisions, the Court in Strasbourg paid attention to national constitutional practice. Domestic decisions - even those that are legally binding - have limited utility for an international body, such as the Court, which applies and interprets an international treaty. In some cases, the Commission and the Court referred to the International Covenant on Civil and Political Rights¹⁵⁹ or other international documents protecting freedom of expression.

Georgia, a member of the Council of Europe, considers the Universal Declaration of Human Rights declared by the General Assembly of the United Nations on 10 December 1948, taking into consideration that this Declaration aims to provide universal and effective recognition and protection of the rights declared therein; taking into account that council Europe is to achieve greater unity between its members, that means of achieving this goal is to protect human rights and fundamental freedoms and to further their implementation; It still reaffirms the commitment to the basic freedoms based on justice and peace in the world whose protection is best done on the one hand, with effective democratic policies and, on the other hand, the overall understanding of and human rights that it is based on;

As an associate of the commonwealth, which has a common heritage of political traditions, ideals, freedom and rule of law, is bound to take steps for collective execution of certain rights declared by the Universal Declaration. In 1999, Georgia became a Member State of the European Council and accordingly it acceded to the European Convention on Human Rights.

The law that implements human rights in Georgia is the Constitution of Georgia, which is the guarantor of freedom of expression and freedom of speech. And especially its individual articles are guarantees of these values. Together with the Constitution, Georgia has adopted a law on Freedom of speech and expression On

¹⁵⁹United Nations General Assembly, International Covenant on Civil and Political Rights, 16 December 1966 (entry into force, 23 March 1976). Without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

June 24, 2004. This law intentionally and narrowly regulates the sphere of free speech and expression in Georgia and it clarifies all existing issues related to the field of freedom to expression. Meantime, the law fully corresponds to the values of the European Convention on Human Rights.¹⁶⁰ The court pointed out the historical reason for such a high degree of protection in accordance with Article 19: “Georgia, which became an independent state, re-emerged as a result of the collapse of the Soviet totalitarian system, considered reasonable to fix the Special Guarantees for protecting the person’s inner world and personal sphere in the Constitution.”¹⁶¹

Article 19 of the Constitution states:

1. Everyone has the freedom of speech, opinion, conscience, religion and belief.
2. It is impermissible to persecute people because of speech, opinion, belief or belief, as well as to express his / her opinion about them.
3. Limitation of the freedoms listed in this Article shall not be allowed unless their expression does not violate the rights of others.

In recent years, broad universal and regional legal frameworks have been created (more than 100 international treaties have been concluded), which study and define the mechanism for the protection of human rights. Fundamental freedoms have become one of the basic principles of international law. Today, the protection of human rights is shaped in a separate context, which is called “International Human Rights Law”. The Constitution of Georgia is based on the basic principles of international human rights law. It specifically emphasizes, that “the state recognizes and protects universally recognized human rights and freedoms, as invincible and supreme human values.” In exercising their powers, the people and the state are limited by these rights and freedoms that are directly applicable to the law.”¹⁶²

In accordance with the Georgian law on “freedom of speech and expression”, the state recognizes and protects freedom of expression, as an inalienable and supreme human value. In the course of exercising this power, „the people and the state are

¹⁶⁰ <https://matsne.gov.ge/ka/document/view/33208?publication=6>

¹⁶¹ Human rights and judicial practice of the Constitutional Court of Georgia, Constitutional Court of Georgia, the ombudsmen of Georgia, Young Lawyers Association of Georgia, 2013, p164

¹⁶² Article 7 of the Constitution of Georgia

bound by these rights and freedoms, as well as by directly acting legislation.”¹⁶³

The law contains all meaningful terms relating to freedom of expression, and states that “the law should be interpreted in accordance with the international obligations of Georgia, including the case law of the European Court of Human Rights, the European Convention on Human Rights and Fundamental Freedoms and the Constitution of Georgia . Meantime, the law does not say what does hate speech mean, or whether it is part of freedom of expression. “¹⁶⁴The rules on freedom of expression are not concentrated only in one legislative act. Freedom of speech and expression is guaranteed by several legislation acts and international documents, also by applicable standards.

In general, it should be noted that the established standard of this law corresponds to the practice formulated in accordance with the freedom of expression by the Constitutional Court of Georgia. The main piece of legislation that guarantees freedom of speech is the constitution. It also provides for the possibility to freely receive information from those sources that are protected in state institutions, restrictions on freedom of speech and rules. Article 24 of the Constitution states, that“Everyone has the right to freely receive and impart information, express and disseminate his opinion orally, in writing or by any other means.” The person has the right to receive and disseminate information by any method considering, that no one needs prior authorization to collect, process or distribute information. The constitution, as well as international documents, prohibits any state control over modern means of information disseminating. An exception is the use of broadcast frequency, which is a natural exhaustive resource. Article 19 of the Constitution of Georgia protects everyone from the responsibility for disseminating information. Namely, “pursuit of a person for the sake of speech, opinion, belief or conviction and his coercion to express his opinion about them”¹⁶⁵

The state is financed by taxes paid by citizens. Accordingly, the public has the right to know what state institutions are doing. At the same time, people will not be able to

¹⁶³ <https://matsne.gov.ge/en/document/download/33208/1/en/pdf>

¹⁶⁴ <https://www.article19.org/resources/should-hate-speech-be-free/>

¹⁶⁵ <https://iuristebi.files.wordpress.com/2012/12/e1839be18394e18393e18398e18390-e18393e18390-e18399e18390e1839ce1839de1839ce18398.pdf> pp. 17-19

fully enjoy the benefits of governance, if they do not have full information about the activities of state bodies. For this it is very important that information protected by the state is available to the public. Transparency of public entities is a prerequisite for democratic governance.

All information that is not recognized in secret is open. According to the Code, every citizen of Georgia, a foreign citizen, a legal entity has the right to request any information available in a state institution. A government agency is required to provide access to all of this information, with the exception of information provided by the 1996 law under the heading "Secret".

As to receiving commercial secret, Disclosure of such information depends on the owner's wishes to disclose such information.

Receiving private information: Private information about individuals is closed, as personal life is inviolable in accordance with article 20 and 41 of the Constitution, it is closed. Any other information that allows for the person's identity is considered as a personal secret. A journalist may receive such information only with the consent of this person. Information from a private institution cannot be obtained. According to the law the refusal to release information can be appealed.

Article 24

1. Everyone has the right to freely receive and disseminate information, express and disseminate his or her opinion orally, in writing or in any other way.
2. Mass media are free. Censorship is not allowed.
3. States or individuals have no right to monopolize mass media or its means of dissemination.
4. In the first and second paragraphs, rights may be limited by law to the implementation of such conditions as are necessary to protect national security, public security or territorial integrity, prevent crime, protect the rights and dignity of others, confidential, recognized information that prevents disclosure or independence and impartiality of the judiciary. The Constitution of Georgia provides for the possibility of strict freedom of speech. In accordance with Article 24 of the Constitution, freedom of speech may be restricted for national security, territorial integrity or public safety,

crime prevention, protection of rights and respect for personal dignity, protection and freedom of speech in accordance with Article 19 of the Constitution.¹⁶⁶ According to the Constitution, freedom of information and speech can be ensured only if the restriction is aimed at protecting the interests of another person or the community as a whole. Freedom of speech, belief, conscience, religion and belief, guaranteed by Article 19 of the Constitution of Georgia, is one of the basic principles of a democratic society. The right to the norms of this constitution guarantees the pluralism of opinions, which has been extracted by a democratic society over the centuries. The practice of the Constitutional Court draws attention to the content of Article 19 of the Constitution of Georgia, focusing on the freedom of the two, the religion and the opinion. Consequently, the Constitutional Court clarifies this norm in the context of Article 24. Article 19 protects freedom of expression as long as it remains in the personal space, and Article 24 after it goes beyond the personal space; The Constitutional Court pays special attention to determining the scope of the right and connects it with the effective implementation and states that "... for the correct realization and perfect protection of any right, the determination of its content and scope is crucial. Otherwise, the temptation and risk of excessive interference with the law exists, which generally violates a reasonable balance between interests and threatens both private and public interests."¹⁶⁷ Thus, the Court interprets the law with as dangerous that may result in giving the right to an unnecessarily broad or narrow meaning. Special attention should be paid to Article 19 of the Constitution of Georgia, since "this article protects the fundamental guarantee of human rights - freedom of thought, speech, faith and conscience."¹⁶⁸ This article provides various freedoms.¹⁶⁹ Freedom of speech is religious and non-religious beliefs and denominations is protected by Constitution of Georgia. A violation of the freedom of

¹⁶⁶ Maya Natadze, a citizen of Georgia, and others against the Parliament of Georgia and the President of Georgia, No.2 / 2-389, October 26, 2007

¹⁶⁷ Decree of the Constitutional Court of Georgia of December 22, 2011 No. 01.01.47 in the case of the Ombudsman of Georgia v. Parliament of Georgia, II, p. 9;

¹⁶⁸ Decree of the Constitutional Court of Georgia of April 18, 2011 # 2 / 482,483,487,502 on the suit of the Political Unification of Citizens "Movement for United Georgia", Georgian Conservative Party, citizens of Georgia - ZviadDzidziguri and KakhaKukava, Association of Young Lawyers of Georgia, citizens of Georgia DachiTsaguria and JabaJishkariani ombudsman of Georgia against the Parliament of Georgian II, p. 9;

¹⁶⁹ Decree No. 1/1/477 of the Constitutional Court of Georgia of 22 December 2011, p.II.

faith can be expressed by the ideological, psychological, and moral influence of a person through intimidation, forcibly rejecting a certain belief in order to change it (and deal with any other faith).¹⁷⁰ The standard of protection is quite high and is only limited to legitimate interests of others. According to paragraph 3 of Article 19 of the Constitution of Georgia, it is unacceptable to restrict freedom of speech and belief, if their manifestation does not violate the rights of other persons.¹⁷¹ Pluralism of opinion is vital for a democratic society."¹⁷² Separate rights, which are associated with the initiative of a special character of the will and its manifestation, are referred to in the constitution as freedom. The difference between rights and freedoms is only conditional. There is no fundamental difference. Both right and freedom means a certain measure of possible actions defined by law. The Constitution of Georgia often contains provisions that indicate the human right to act freely, "Everyone has the right to freely receive and disseminate information, express and disseminate his opinion orally, in writing or in other form."¹⁷³ When legal interests are contrary to each other, both sides have the right to safeguard these interests. The outcome of this dilemma is the only one in a democratic society - a fair balance.¹⁷⁴

Legislation of Georgia on freedom of speech

The journalist has the right to receive information from the state. The request for access to information also applies to all local authorities and administrations, as well as legal entities under public law. Transparency of government activity is a necessary condition for democracy. All information that is not recognized in secret is open. According to the Code, every citizen of Georgia, a foreign citizen, a legal entity has the right to request any information available in a state institution. A government agency is required to provide access to all of this information, with Receiving private information: Private information about individuals is closed, as personal life is inviolable in accordance with article 20 of the Constitution, and according to article 41, it is closed. Any other information that allows for the person's identity is considered a personal secret. A journalist may receive such information only with the

¹⁷⁰ 388 Resolution of the Constitutional Court of Georgia of December 22, 2011 No. 01/477.

¹⁷¹ Decision No. 2/1/241 of the Constitutional Court of Georgia of March 11, 2004, P. I;

¹⁷² Decree of the Constitutional Court of Georgia of December 22, 2011 No. 1/1/477, II p.

¹⁷³ Constitution of Georgia, Article 24.1

¹⁷⁴ Decree No. 1/1/477 of the Constitutional Court of Georgia of 22 December 2011, II, p.

consent of this person. Information from a private institution cannot be obtained. Resolutions of the Constitutional Court of Georgia in relation to Article 19:

Citizen Georgy Korganashvili against the Parliament of Georgia / Constitutional Court of Georgia, Decision No. 2/94/1 of September 27, 2000;

Association of Young Lawyers of Georgia against the Parliament of Georgia / Decision of the Constitutional Court of Georgia No. 2/2 / 180-183 of November 5, 2002. Decision /

Akaki Gogichishvili's citizen against the Georgian parliament / No. 2/1/241 Decision of the Constitutional Court of Georgia of March 11, 2004 /

Georgian citizen Maya Natadze and others against the Parliament of Georgia and the President of Georgia / October 26, 2007. Constitutional Court of Georgia No. 2 / 2-389 Decision /

Civil Political Union "Conservative Party of Georgia", Civil Political Union "Conservative Party of Georgia", Citizens of Georgia, Public Defender of Georgia against the Georgian Parliament / Georgia Constitutional Court, April 18, 2011 # 2/482483487502 solution /

Public Defender of Georgia against the Parliament of Georgia / Constitutional Court of Georgia on December 22, 2011 No.

11.1. Restrictions on freedom of speech in Georgia

According to the law on Freedom of Expression and Speech of Georgia, The restriction of rights recognized and protected by law can be established only if it is clear enough, and the benefit that protects the constraints exceeds the losses caused by the constraint.

Restrictive law should be:

- A) Directly led to legal goals;
- B) Critically necessary for a democratic society;
- C) Non-discriminatory;
- D) Proportionally restrictive

Freedom of speech is not an absolute right and can be regulated if there is:

A) slander; The Law of Georgia On Freedom of Speech and Expression states, that “A person shall bear responsibility under the civil law for slander of a private person, if the plaintiff proves in court that the statement of the respondent contains a substantially false fact in relation to the plaintiff, and that the plaintiff suffered damage as a result of this statement.”¹⁷⁵ If the “victim” of the slander is a public figure, “A person shall bear responsibility under the civil law for slander of a public figure if the plaintiff proves in court that the statement of the respondent contains a substantially false fact in relation to the plaintiff, and that the plaintiff suffered damages as a result of this statement, and the falseness of the stated fact was known to the respondent in advance, or the respondent acted with apparent and gross negligence, which led to spreading a statement containing a substantially false fact.”¹⁷⁶ According to the Law of Georgia on Freedom of Speech and Expression, A person shall be released from liability for slander, if he/she did not know and could not have known that he/she was disseminating slander. ¹⁷⁷ In the event if an apparently groundless claim for slander has been filed that is aimed to create an unlawful restriction of freedom of speech and expression, according to article 18, which considers “Groundless claim for slander”, the respondent shall have the right to demand monetary compensation, within reasonable limits, from the plaintiff. A 100-day deadline has been established for going to court after a person has read or could have read the statement.¹⁷⁸

B) Obscenity; There is a deep intellectual need for satisfactory constitutional law and moral theory, in the absence of which “constitutional law cannot make genuine progress.” ¹⁷⁹ The relationship between morality and constitutional law is not precise.¹⁸⁰ The necessary preliminary step is to study the very concept of the obscene. To understand the law of obscenity, it is necessary to give some accuracy to this very concept. When we consider freedom of thought and expression in speech, press, religion, or association, people are free in their decisions, whom to communicate with,

¹⁷⁵ Article 13- Slander of a private person

¹⁷⁶ Article 14 - Slander of a public figure

¹⁷⁷ Article 16 - Limits of liability for slander

¹⁷⁸ Article 19- Law of Georgia on Freedom of Speech and Expression

¹⁷⁹ Dworkin, The Jurisprudence of Richard Nixon, THE NEW YORK REVIEW OF BOOKS, May 4, 1972, at 35. See also Dworkin, Legal Research, DAEDALUS, Spring, 1973, at 63

¹⁸⁰ See Richards, Equal Opportunity and School Financing: Towards a Moral Theory of Constitutional Adjudication, 41 U. CHI. L. REV. 32, 32-33, 39-41 (1973).

or believe, and so on. This stems from the concept of self-esteem,¹⁸¹ which comes from the full and unhindered use of a mature person's abilities, which are the key to human rationality.¹⁸² From this point of view, the value of freedom of expression is based on its deep attitude towards self-esteem arising from autonomous self-determination, without which the life of the spirit is depressing.¹⁸³ Other arguments in favor of the moral value of freedom of expression, for example, its connection with the discovery of truth,¹⁸⁴ , on the contrary, seem less powerful and often miserably misused when they are not bear the fundamental weight they are not needful at all.

Obscene expressions can be caused by different reasons. Sometimes this indicates a lack of culture and education or a specific person's lifestyle. Sometimes a person breaks out because of a strong feeling of protest or anger, and he / she begins to use obscene expressions. There are several examples of such expressions in the media. Sometimes these expressions are used because of extreme indignation, protest, and so on. For example, the director of broadcast channel Nika Gvaramia He used the words of swearing in relation to one very influential and famous person. This caused inhomogeneous reactions in society. His expression has become the subject of general discussion. Some people think that he is just a rude and arrogant person, some believe that he simply expressed his outrage at the social and political situation in the country. But, as stated by one of the experts in the European doctrine of human rights, this did not go beyond the European Convention. Recent times the obscene language often are used in TV serials, or soap operas. This is artistic way to make the film more natural, but sometimes it is more, than natural.

B) insult; This is the case when an insult has become almost an everyday rule. It is embedded in all types of communications: from online or offline media, from broadcast media. Diplomatic language is defined as "that hidden understatement that

¹⁸¹ Self-respect has its natural basis in our desire to exercise our capacities competently. See D.A.J. RICHARDS, *supra* note 15, at 257, 267-68.

¹⁸² See note 91 *supra*. See also J. BENNETT, *RATIONALITY* (1964).

¹⁸³ Cf J.S. MILL, *ON LIBERTY* 67-90 (C. Shields ed. 1956). See also C. BAY, *THE STRUCTURE OF FREEDOM* 65-152 (1965)

¹⁸⁴ Mill emphasizes these arguments when he discusses the moral basis for freedom of thought and discussion, J.S. MILL, *supra* note 98, at 19-67, yet, stronger arguments are mustered when he discusses individuality, *id.* 67-90. Cf C. REMBAR, *THE END OF OBSCENITY* 12-13 (1968).

allows diplomats and ministers to talk to each other sharp things without becoming provocative or impolite.” Insults by diplomats may be rare, but they seem to have been more common as preludes to war. Many of them were not just a careless phrase that elicited an emotional response — they had a strategic point of view.¹⁸⁵ A good way to determine a typical speech act is to determine what it intends to convince or force the listener to do. This approach works well for insults: an insult must cause a certain belief in the recipient: the recipient must simply believe that this act of insult is intended to lower him/ her. The essence of the insult is not in what it literally says, but in the intention it conveys. Insult is a violation of the honor and dignity of a person, expressed in the form of aberration. The Civil Code of Georgia does not know responsibility for offensive statements, even if such a statement is detrimental to the honor and dignity of a person.¹⁸⁶

D) Incitement to commit a crime; In criminal law, incitement is the prompting of another person to commit a crime. Depending on the jurisdiction, some or all incitement may be illegal. In cases where it is illegal, it is known as an inherent offense, when harm is foreseen, but may or may not occur.

On May 3, 2019, the head of the State Security Service, Vakhtang Gomelauri, delivered a speech in parliament. In his report, he touched on issues related to the instigation policy towards Georgia by another state. He spoke of a hybrid war, but did not specify which country the danger came from.

According to Vakhtang Gomelauri, in 2018 Counterintelligence of the State Security Service of Georgia analyzed the sphere of interests of foreign special services, after which it was established that foreign security services tried to destabilize the country, stir up ethnic conflicts and anti-Western sentiments as part of the Hybrid War.

“As a result of analyzing the information received during the reporting period, the main challenges that pose a danger to the security of the country were put forward. Among them, the infringement of territorial integrity, the creation of individual centers of destabilization and disorder in some areas, an attempt to change the external course to violate the sovereignty of the country.”

¹⁸⁵ Barry O’Neil, The University of Michigan Press

¹⁸⁶ The restriction freedom of speech, National Parliamentary Library of Georgia

An important challenge was the expiring threat from the various actors of hybrid dangers. In the hybrid warfare campaigns, foreign Special Services set the goal of confronting various ethnic and religious groups living in Georgia? to arouse anti-Western sense and deterioration in bilateral relations with countries in the region and partners, Infringement of the image of a democratic and stable state, etc., ” -said Vakhtang Gomelaury.

According to the head of the State Security Service, he said that foreign Special Services were actively using destructive forces to achieve these goals, through the media and social networks, and spread mass disinformation and fake news.¹⁸⁷

E) The threat; From a legal point of view, a true threat is a statement that is intended to frighten or intimidate one or more of these persons, forcing them to believe that the speaker or someone acting on the instructions of the speaker will cause them serious harm. True threats make up the category of unprotected speech.¹⁸⁸ A true threat is a threat that “on its part and in the circumstances in which it takes place is so unequivocal, unconditional, immediate and concrete in relation to the person threatened, which conveys the seriousness of the goal and the inevitable prospect of execution”. The definition of threat is still formulated by lawyers as the final criterion for true threats; lawyers must use the criterion that is valid in their jurisdictions.

Inga Grigolia, the leading and reactionary journalist of the TV Company First Channel addresses the Ministry of Internal Affairs to protect her safety. The journalist has repeatedly stated about the threat to the police. Investigation has already begun in connection with the statement of Inga Grigolia. The case was initiated according 151 of the Criminal Code of Georgia, under the threat of murder. The Ministry said that the relevant investigative actions are conducted in connection with the case. Inga Grigolia wrote, that since 2011 she was threatened by an unknown man. Grigolia first appealed to the police in 2013, but the case was closed due to the absence of crime evidence.

“I asked for protection. Until now, I was told that the police had no reason to detain

¹⁸⁷ The report of Vakhtang Gomelaury in the Parliament of Georgia on May 3, 2019, <http://www.tabula.ge/ge/story/148150-gomelaury-ucxo-qveknis-specsamsaxurebi-hibriduli-omit-antidasavlur-gantskobebis>

¹⁸⁸ By Kevin Francis O'Neill (Updated June 2017 by David L. Hudson Jr.)

this person, since there was no direct threat (for example, to kill). Perhaps a woman must necessarily die in order to catch the rapist."

"All the time I talked about the topic of violence_ about dead and beaten women, about women under terror and pressure. At such moments I had the most acute reaction. I do not want to be killed, I do not want, that my murder was the subject of the story of my colleagues." -wrote the journalist.

According to the Ministry of Internal Affairs, appropriate investigative actions were taken, Inga Grigolia and other witnesses were interrogated. The police took out letters, and other material evidence contained a threat. The investigation found, that the person had sent threats to Inga Grigolia also by phone, or email for a long period of time. The investigation is carried out on the facts of threats and harassment in accordance with paragraph 1 of Article 151 of the Criminal Code of Georgia.¹⁸⁹

F) If it concerns personal data, state, commercial or professional secrets;

Public information - an official document (including a drawing, model, plan, design, photo, electronic information, video and audio recordings), which is stored in a public institution, i.e. information received, processed, created or sent by a government agency or government officials regarding the implementation of their activities, as well as public information provided by a government agency on a proactive basis.

As personal data, any information is considered that allows identifying an individual. A person can be identified when his identity can be established directly or indirectly, namely by identification number or physical, physiological, psychological, economic, cultural or social characteristics of a person. A public institution is obliged to not disclose personal data of persons, with the exception of government officials (as well as candidates nominated for the position of state official) without the consent of the person or without informed court decisions, as provided by law.

Over the years, European legal reality faces a certain dilemma. The decisions of some European courts include the identities of the parties, which are usually available to the public. In other cases when the civil law system operates, decisions are published mainly on the basis of the confidentiality of the parties. In the first case, acts

¹⁸⁹ <http://www.tabula.ge/ge/story/132899-inga-grigolias-mimart-muqaris-saqmeze-shss-m-gamodzieba-daitsko>

the principle of publicity, and in the second - dominates the idea of protecting personal data's.¹⁹⁰

Civilian law is a legal system originating in Europe, reflected within the structure of Roman law, the main line of which is that its main principles are codified into a system which serves as the primary source of law. This contrasts with common law systems, which comes from judge-made decisional law, and gives preceding authority to prior court decisions, on the unfair principle that treats similar facts differently on different cases.

This practice is contrary to transparent jurisdiction in accordance with paragraph 1 of Article 6 of the European Convention of the Human Rights, according to which civil and criminal proceedings must be conducted in accordance with the principle of transparency, and the decision must be announced publicly. This leads to an inappropriate situation where the media has the opportunity to attend and elucidate court hearings due to high public interest, while in Georgia on the basis of the Organic Law of Georgia on General Courts, the media have the right to cover court hearings, when the opinions and justifications of judges can only be accessed by concealing of the parties.¹⁹¹

In connection with this question three special international mandates - the Special Rapporteur on Freedom of Expression of the UN, The Special Representative of the OSCE on Freedom of the Media, and the Special Rapporteur of the United States Freedom of Expression presented the Joint Declaration in 1999, which contained following instruction: "Freedom of expression is characterized by the public's right to open access to information and knowledge of what the government does on their behalf, without which the truth will be weakened, and people's participation in government will be fragmentary."¹⁹²

The following Directive of 2004 joint declaration was clearer and more precise: The right of access to information held by a public institution is a fundamental human right, which must be given an appropriate effect through sequential domestic

¹⁹⁰ Court decisions in Georgia: how to protect the balance between freedom of information and confidentiality, Toby Mendel, 2017

¹⁹¹ <http://www.parliament.ge/uploads/other/43/43064.pdf>

¹⁹² International Mechanisms for Promoting Freedom of Expression

legislation based on the principle of publicity (for example, laws on freedom of information), where there will be a presumption that all types of information are available and are subject only to Restriction by an exceptionally narrow system."¹⁹³

Based on their content, the secrets may be the following: commercial secret, professional secret, state secret. Personal data and relations related to their protection and processing are governed by the Law of Georgia on Personal Data Protection.¹⁹⁴

A commercial secret is information related to a plan, formula, process or tool that has commercial value, or any other information that is used to produce, process or process goods or provide services, and / or information that is an innovative or important result. Technical creativity, as well as information, the disclosure of which may impair human competitiveness. Trade secrets - information about the plan, formula, process or means of commercial value or any other information, as well as other information that may harm a person's competitiveness in the event of its disclosure. According to the General Administrative Code of Georgia, information about the administrative body is not a commercial secret. A state institution is obliged to enter into the State Register information about a commercial secret request by a third party or a state institution, the date of the request, as well as the person and address of the requester.¹⁹⁵

Professional secrecy is information relating to the personal information or trade secret of other persons, which has become known to another person in connection with the performance of his official duties.

As a state secret, information is considered that includes data containing state secrets relating to the fields of defense, economy, foreign affairs, intelligence, state security and public order, the disclosure or loss of which can cause significant damage to sovereignty, constitutional order, politics and economic interests of Georgia or parties to international agreements and agreements. Information that is recognized as a state secret by national legislation and international agreements is subject to protection. Information is classified as a state secret in accordance with the requirements of the

¹⁹³ 2004 Joint Declaration by the Three Special Mandates for Protecting Freedom of Expression
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¹⁹⁴ Law of Georgia No 6327 of 25 May 2012 - website, 12.6.2012

¹⁹⁵ <https://matsne.gov.ge/ka/document/download/16270/21/en/pdf>, chapter3, access to information

State Secrets Act.¹⁹⁶

If it represents advertising, teleshopping or sponsorship; freedom of speech and expression of opinions of military personnel, administrative body, as well as its official, member or employee;

Although freedom of faith is of great importance, this does not exclude the possibility of its limitations. In some cases, the state has the right and the duty to interfere in the freedom of belief in order to ensure respect for the autonomy of others, to protect the legitimate interests of individuals and society.¹⁹⁷ "The exercise of human rights and freedoms must not violate the rights and freedoms of others"¹⁹⁸ Opinions expressed as a result of the realization of the right to justice, the court establishes a standard: "... The information disseminated must be reliable. As a result of this condition, freedom of speech is opposed to the freedom and dignity of the individual. "¹⁹⁹To restrict the speech, the criterion established by the Constitutional Court is used:²⁰⁰ "1. Interference with freedom of speech is provided by law; 2. Intervention has a legitimate aim ...; 3. Intervention is a proportionate measure to achieve a goal, and to fulfill the legitimate aim of a democratic society specific intervention. "

Restriction of freedom of speech is permissible if its manifestation violates the rights of others, and this is the only condition that can cause freedom of speech and freedom of expression. "²⁰¹The Constitution establishes restrictions on the detriment of others honor and dignity.²⁰²

Censorship is prohibited by the Constitution of Georgia. The Constitution excludes prior control of information to be published in the media. No one has the right to prohibit mass media, publish information or force them to publish any information. At the same time, the Georgian constitution considers it possible to use censorship if there is a threat to state security, public security or the legitimate interests of the person.

¹⁹⁶ <http://nea.gov.ge/en/publicinfo/general-information/20/>

¹⁹⁷ 418 Constitutional Court of Georgia Resolution No. 1/1/477 of December 22, 2011, II.

¹⁹⁸ Article 44 § 2, the Constitution of Georgia

¹⁹⁹ Decree of the Constitutional Court of Georgia No. 1/241 of March 11, 2004, paragraph P. I.2.;

²⁰⁰ Resolution of the Constitutional Court of Georgia No. 1/241 of March 11, 2004

²⁰¹ Decision No. 2/1/241 of the Constitutional Court of Georgia of March 11, 2004, P. I;

²⁰² Resolution of the Constitutional Court of Georgia No. 1/241 of March 11, 2004

However, such powers must be provided by law. Currently, the law on the possibility of censorship is not adopted yet. Preliminary restrictions on the dissemination of information are unacceptable. Only after the publication of the information comes a criminal or civil liability of the persons. Article 198 of the Civil Procedure Code prohibits certain actions to secure a claim. This can be understood as if the court could prohibit a person from disseminating certain information. In practice, had not been such case yet. According to article 18, part 2 of the Civil code of Georgia, “A person is entitled to demand in court the retraction of information that defames his honor, dignity, privacy, personal inviolability or business reputation unless the person who has disseminated such information can prove that it corresponds to the true state of affairs. The same rule applies to the incomplete dissemination of facts, if such dissemination defames the honor, dignity or business reputation of a person.”²⁰³ The court, with the exception of paragraph 3 of Article 19 of the Constitution of Georgia, attaches great importance to Articles 7 and 44 of the Constitution as grounds for restricting freedom.²⁰⁴ Independent media contribute to strengthening the rule of law and to institutionalizing decentralization, transparency, and involving citizens in the political process for holding free and fair elections, which are possible only if media space is available for competitive power.²⁰⁵

Restrictions are permitted for juveniles to provide information. In accordance with the Law of Georgia on the Protection of Minors from Harmful Influence, it is necessary to protect juveniles, or persons under the age of 18, from the harmful effects of the different means of information.

Propaganda of war and a call to war is a punishable crime under the Penal Code. Call to overthrow the government is also punishable under the criminal code, propaganda of Violence or brutality²⁰⁶

Article 24 protects freedom of expression, because assemblies and manifestations also serve to demonstrate a specific position, therefore ... assemblies (manifestations)

²⁰³Civil code of Georgia, article 18, part2

²⁰⁴ Article 44, paragraph 2 of the Constitution;

²⁰⁵ Problems of media pluralism in Georgia, Malkhaz Saldadze
Political scientist, PhD student of Ilia Chavchavadze University

²⁰⁶ <https://iuristebi.files.wordpress.com/2012/12/e1839be18394e18393e18398e18390-e18393e18390-e18399e18390e1839ce1839de1839ce18398.pdf>, PAGE 17-19

are considered constitutional based on its content and purpose. This defines the natural and essential connection between Articles 24 and 25 of the Constitution.

It should be said that under Article 25, the right to assembly and manifestation is recognized for all persons.²⁰⁷

In order to protect the rights of others, the possibility of restricting the freedom of expression is specified in article 24 (4).²⁰⁸ At the same time, the more intensively the right to assemblies interferes with the rights of others, the more he has the authority to interfere in the affairs of the government in the process of assembly (manifestation). ”

12. The real situation in the realm of freedom of speech in Georgia

According to the studies which was commissioned by the European Union (EU) and United Nations Development, Programmed (UNDP) under the Joint Projects “Human Rights for All” and “Enhancing Access to Justice and Development of a Child-friendly Justice System in Georgia”:

- 64% of respondents believe that human rights in Georgia are fully or more or less protected. Only 48% were of the same opinion the situation was five years ago, and 32% had this opinion 10 years ago.
 - 50% believe that information on the mechanisms for the protection of human rights and the protection of the person is not equally accessible to everyone, including vulnerable persons, disabled, etc.
- Source of information on mechanisms for the protection of human rights and television (88%);
- Representatives of non-governmental organizations also believe that there are trends of improvement in the field of human rights situation;
- According to the unequivocal opinion of the respondents (27%), labor rights are the most frequently violated rights in Georgia. Tbilisi stands out with the most radical

²⁰⁷ Decision of the Constitutional Court of Georgia # 2 / 482,483,487,502 of April 18, 2011 II, P.138;

²⁰⁸ Decision of the Constitutional Court of Georgia # 2 / 482,483,487,502 of April 18, 2011, II.

position on this issue (36%);

- The population treats patrol police pretty well, claiming greater confidence (67%) in this structure than in other institutions;
 - 10% of respondents heard about the National Human Rights Strategy 2014-2020, and 9% say they also know about the National Action Plan for Human Rights. The survey showed that society is more focused on social rights with labor rights in order to be main concern for society, along with the right to life and equality.

It is noteworthy that the survey results are more or less the same in Tbilisi, other urban areas and rural areas.²⁰⁹

We have a similar case when the realization of the right to assembly (manifestation) violates the traffic law²¹⁰.

“We want people not to suffer insult, slander, hatred, and we need to think about how to protect freedom of speech and human dignity at the same time as it happens in many countries,” said President of Georgia Salome Zurbishvili. On the eve of the New Year . In the Christmas message, the Patriarch of Georgia said: “Today, people tend to humiliate others, lies and bad language have become common, even the heaviest form of falsehoods — deliberately covered with the mantle of truth, that is misleading the listener. Probably, whoever does this, thinks that since he does not kill and physically endure, this crime is insignificant, which is a huge mistake. The Parliament Speaker Irakli Kobakhidze responded to the president’s statement: “Everyone worries ... The Patriarch, the President, each of us ... within the framework of freedom of expression, it is possible to take measures and change the legislation. ”- Said she.

In Georgia, where the desire to protect publicity and privacy is strong, the local organization (Institute for the Development of Freedom of Information) raised this issue, which became the subject of active discussion. In this case, civil society and government agencies were on opposite sides of the discussion table.²¹¹

Part of society believes that any legislative amendment which worsens the standards

²⁰⁹https://www.undp.org/content/dam/georgia/docs/publications/DG/UNDP_GE_DG_Human_Rights_Survey_2017_eng.pdf

²¹⁰ Decision of the Constitutional Court of Georgia # 2 / 482,483,487,502 of April 18, 2011, II.

²¹¹ See <https://idfi.ge/ge>.

of freedom of expression will threaten the democratic development of the country.

"We are deeply convinced that any legislative changes that worsen the standards of freedom of expression will threaten the democratic development of the country "- said the executive director of the Charter of Journalistic Ethics. The non-governmental organization "Multinational Georgia" requires a tougher fight against the use of "hate speech" and adequate amendments to the Criminal Code. Together with the initiative of "Multinational Georgia", NGOs, along with the preparation of a legislative initiative, will also create a working group that will follow public statements by public officials and identify the use of "hate speech". Public space in Georgia, whether it's television speakers or newspaper publications, is full of aggression and insulting statements. There is an opinion that hate speech is most often found in print media.²¹² The situation in the media in 2008 was somewhat similar to the situation in the civilian sector. The political positions of large sections of media organizations have affected their political and economic interests. In this regard, the role of electronic media, especially television, was most important, since this latter included the widest audience, and it had the greatest influence on the public mood. Naturally, the government's goal was to control media organizations (and still remain so) by acquiring or pressure their owners.²¹³

TV space has a large coverage area. TV space has a large coverage area. It has the possibility to cover events in a live mode. It has several advantages over printed media. That is why the interest towards him is immensely in influential circles. In fact, the media in Georgia largely depend on political institutions that actively intervene in its activities, which, in turn, significantly limits the social and political role of the media. One of the most important components intervention of the state or a political group endowed with state power, in the economic aspects of TV media is the problem of "determining" media owners.

Media pluralism and freedom are limited by the following government actions:

Replacing media owners, in particular replacing old owners with loyal owners, which

²¹² <https://www.radiotavisupleba.ge/a/2116353.html>

²¹³ Problems of media pluralism in Georgia

Policy Statement of the Caucasus Institute for Peace, Democracy and Development, National Parliamentary Library of Georgia

is often expressed in the actual purchase of media by the authorities, formally forming a controlling package of control over the ownership of the authorized person/organization;

To address the already poor economic resources (on the advertising market) in Georgia to loyal government television channels;

The uncertainty of the economic basis of telemedia hinders the implementation of an independent editorial policy, and also reflects on the level of its professionalism;

Use of administrative resources (court, prosecutor's office or communications regulatory authority) to decide on broadcast frequencies and, in some cases, limit their use by revoking licenses.

There are plenty of problems in Georgia in the spheres of economic, politic, law and in the field of self-expression, of course. But after a long period of totalitarian Soviet regiments and wars with the successor of the Soviet Union, the Russian Federation it is not strange. Georgian people want peace, development. Progressive society of Georgia struggles for the protection of the rights guaranteed by the European Convention and the Constitution of Georgia as well, including the right to free speech, among them.

On November 4, 1950, the 12 member states of the Council of Europe signed the Convention for the Protection of Human Rights and Fundamental Freedoms, which is known as the European Convention on Human Rights and entered into force on September 3, 1953.

The convention was the first to make the rights declared in the Universal Declaration of Human Rights compulsory.

The Convention was also the first agreement on the creation of a supranational body to ensure the fulfillment of obligations assumed by states. The Convention has played a crucial role in the development of international law. After the states agreed with the court's decision to consider trials, human rights in national law and the practice of actual advantage.

The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights, was signed in Rome (Italy) on 4 November 1950 by 12 member states of the Council of Europe and entered

into force on 3 September 1953.

It was the first instrument to give effect and binding force to certain of the rights stated in the Universal Declaration of Human Rights.

It was also the first treaty to establish a supranational organ to ensure that the States Parties fulfilled their undertakings. The Convention was a milestone in the development of international law. Once states had accepted that a supranational court could challenge decisions taken by their own courts, human rights de facto gained precedence over national legislation and practice.

“On this anniversary I encourage all states to reaffirm their commitment to the European Convention of Human Rights”, said Secretary General Thorbjørn Jagland.

“It remains one of the most remarkable achievements in international law and a triumph for individual liberty and common values among nations.

In the last 65 years the Convention has rid Europe of the death penalty, prohibited torture and enshrined fundamental human rights in the legal systems of 47 countries. It has become the glue which binds the European continent together and it continues to protect essential freedoms through periods of change, conflict and crisis – including freedom of expression, assembly, thought and religion, as well as the right to privacy, fair trial and equality before the law.

When governments fail to uphold these obligations, the European Court of Human Rights guarantees the right of individual petition to Europe’s 820 million citizens. It is no wonder, then, that the Convention system remains a beacon of hope to people around the world”, - he stated.²¹⁴

²¹⁴ <https://www.coe.int/ka/web/tbilisi/-/65th-anniversary-of-the-convention>

Conclusion and Recommendations

The problem of freedom of speech is as old as the genesis of ideas of human freedom. "Freedom means the right to do everything that does not harm others," any freedom requires being in harmony with other interests and peaceful coexistence. The solution is the only one in a democratic state - this is a fair balance. That is why the European Court of Human Rights, reasonably and justifiably, believes that achieving a fair balance between opposing interests is the main task of the European Convention on Human Rights and the European Court of Justice. The European Court gives freedom of speech a vital role in a democratic society because through that public discussions of public interest issues take place. The transfer of ideas and information to the press is not only correct but also obligatory. In addition, it is the most effective way to ensure the freedom to receive information and ideas from the public.

Because of this, freedom of the press presents both a personal and public interest.

The European Court uses a number of principles, concepts or doctrines to promote freedom of speech; "the right to use excessive and provocative statements", protection of confidentiality of journalistic information sources, the concept of "stinging effect", are among them; the concept of imposing strong positive obligations to the government regarding press freedom, a negative preliminary banning of public publications, etc.

For the protection of free speech in Georgia, the existing laws and codes of conduct are not sufficient: "Law of Georgia on Freedom of Speech and Expression of Opinions"; Law of Georgia on Meetings and Manifestations"; Law of Georgia on

broadcasting; Code of Conduct for Broadcasters; Draft law: Law of Georgia on "Elimination of All Forms of Discrimination".

Considering that in order to protect the freedom of speech, the Georgian legislation should be further refined by the European experience.

It is clear and obvious that the jurisdiction of Georgia not only needs to be expanded in the area of freedom of speech with respect to the EU system, but this step is timely and necessary.

The Parliament of Georgia should develop a perfect, complex draft law, in which would take part representatives of the government, the public, non-governmental organizations, several ethnic, religious and minority groups in the country. It is worth mentioning the activities of NGOs in Georgia. They are always at the epicenter of events and unselfishly help people to achieve justice. They always support the truth, regardless of everything. The government often considers the least of the facts and organizations such as journalists play the role of "watchdogs" for justice.

For us, as countries of a young democracy, the support of European structures is essential. This is essentially the one that our European friends have tirelessly done before. Their recommendations and advice will be invaluable in the future as well. We are for establishing a closer and more intensive connection in this area.

Abstract

The right to freedom of speech is associated with a dilemma, on the one side of which are the rights and basic obligations provided by Article 10 of the European Convention on Human Rights, and on the other hand, the interests of the state, individuals or legal entities that are limited to a certain framework to protect their same interests.

The conclusions reached in the work are based on the decisions and judgments of the European Court of Human Rights and the European Commission, which helps us to achieve a fair balance in the conflict of values.

Freedom of speech, which is a kind of indicator of democracy, shows that individual and public interests do not have the opposite content, but they somehow fill each other. Public interest is unthinkable without the interest of individuals and vice versa.

The rights provided for in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, particularly freedom of speech, were chosen to study the above problems, since ensuring freedom of speech and expression is more important and relevant. In its content it is a very specific and complex issue, which is determined by its nature, reflecting objective reality.

Abstrakt

Das Recht auf freie Meinungsäußerung mit einem Dilemma verbunden ist, auf der einen Seite, von denen die Rechte und Grund von Verpflichtungen aus Artikel 10 der Europäischen Menschenrechtskonvention, und andererseits die Interessen des Staates, Einzelpersonen oder juristische Personen, die in einem gewissen Rahmen begrenzt sind ihre gleichen Interessen zu schützen.

Die Schlussfolgerungen in der Arbeit erreicht werden, basierend auf den Entscheidungen und Urteilen des Europäischen Gerichtshofes für Menschenrechte und die Europäischen Kommission, die uns einen fairen Ausgleich in dem Wertekonflikt zu erreichen hilft.

Die Freiheit der Rede, die eine Art Indikator für die Demokratie ist, zeigt, dass individuelle und öffentliche Interessen haben nicht das Gegenteil Inhalt, aber sie füllen irgendwie einander. Das öffentliche Interesse ist undenkbar ohne das Interesse der Menschen und umgekehrt.

Die Rechte nach Artikel 10 der Europäischen Konvention zum Schutz der Menschenrechte und Grundfreiheiten, insbesondere der Redefreiheit, wurden die oben genannten Probleme zu studieren gewählt, da die Meinungsfreiheit zu gewährleisten und Ausdruck ist wichtiger und relevant. In seinem Inhalt ist es eine sehr spezifische und komplexe Frage, die von Natur aus bestimmt wird, was die objektive Realität.

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